

Exhibit 16



Marywood

UNIVERSITY

OFFICE OF THE PRESIDENT

MARYWOOD UNIVERSITY
SCRANTON, PA 18509-1598
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www.marywood.edu

February 8, 2012

Dr. Frederick Fagal
17 East Lake Street
Skaneateles NY 13152

Sent via email (fffagal@yahoo.com), certified mail, regular mail

Re: Recommendation for Termination

Dear Dr. Fagal:

Pursuant to your attorney's request, the following is a revised statement of charges. As a result of your breach of a material term of your obligations as a tenured professor, I am recommending that your tenure and employment with Marywood be terminated immediately. The University will, however, pay you the remainder of your 2011-12 Agreement and keep you on benefits through August, 2012. This recommendation comes after much consideration of and reflection on your actions which I find to be highly offensive and directly contrary to Marywood's Mission and Values, your tenure agreement and your obligation as an employee of this University to conduct yourself in accordance with our policies and values.

As you know, our values include, among others:

- A commitment to spiritual, ethical and intellectual values in the context of a faith community.
- Respect for the value of each human being, for diversity in the context of vibrant community, and for the earth and all creation.

After reviewing the subtitles you authored and transposed onto a film depicting Adolf Hitler and the Nazi regime, I find that you deliberately and maliciously violated our principles and your commitment to this University by: 1) depicting Executive Officers and me in an offensive and hostile light, including making highly inappropriate comments about family members of these individuals; 2) using sexually explicit, offensive and insulting language; and 3) portraying an image of Marywood in a manner that was an affront to the University community as a whole. As a result, I am recommending that your tenure and employment be terminated and provide you the following Statement of Charges:

1. Breach of Tenure Agreement

Marywood's tenure policy provides in relevant part:

It implies a mutual commitment on the part of the faculty member and the University and cannot be taken lightly...Once tenure is granted, it will be discontinued only for grave reason, which may include moral turpitude, flagrant abuse of academic freedom, or professional incompetence...The commitment of a faculty member who requests tenure is as deep and binding on the faculty member as it is on the University. Just as

the conferring of tenure by the University recognizes the competence of an individual faculty member, submission to the University of an application for tenure suggests a strong acceptance by that individual of the mission, goals and objectives of the University. The request represents a commitment to work jointly with faculty, students, administrators and staff for the growth and welfare of the University.

(Emphasis added).

Your decision to author and disseminate the above described video is a breach of your commitment to Marywood and is in direct contravention of the letter and spirit of Marywood's Mission, Core Values and Objectives. To be clear, however, enclosed is a copy of Marywood's Mission, Core Values and Objectives. Depicting the University's President as Adolf Hitler, a man who is responsible for torturing and killing in excess of 6 million people simply because they are Jewish is an intentional, malicious and blatant violation of your tenure commitments. Portraying other University officials as Nazi leaders, using crude and vulgar language and belittling University officials also violates your agreement with Marywood. You gravely injured our community by your actions.

2. Violation of Civil Rights Policy

Marywood's Civil Rights Policy provides in relevant part:

Marywood University does not condone and will not tolerate discrimination, harassment, or assault by any member of the Marywood community upon another individual, regardless of whether the action is based on race, sex, color, national or ethnic origin, age, creed, ancestry, religion, disability, or any other legally protected status.

In your video, not only do you attempt to make light of the Nazi regime, which evokes deep personal reminders of the extreme hate of members of the Jewish faith, but you also demean and belittle Dr. Levine and his family and launch other personal attacks on executive officers. Harassment of this type directly violates our Civil Rights Policy and will not be tolerated.

3. Violation of Marywood's Conditions of Computer Use Policy

Marywood's Conditions of Computer Use policy provides in relevant part:

Users of Marywood University computing facilities and services are held to high ethical standards. These conditions of use are based on the "spiritual, ethical and religious values and a tradition of service" expressed in the Mission Statement of the University. They underscore responsible, ethical, legal, and secure use of the campus-wide information system, and they derive from standards of common sense and common decency that apply to any shared resource. Responsibility extends to access, use of information, and distribution of data.

Marywood University administrators, faculty members, staff, and students may use the computers in all public computing facilities for research work and classroom assignments...

Access to the Marywood computer system is not a right, but a privilege. When individuals log on to the University's computer system, they become responsible for adhering to University policy and state and federal laws governing individual privacy rights and confidentiality. The following list is not all-inclusive: [and includes the following:

- They honor the intellectual rights of others by avoiding copyright infringement. This includes all Marywood University-owned computers, i.e., computers purchased with University funds.
- They do not make or use unauthorized copies of copyrighted or licensed programs or data. They only use authorized copies in full accord with the license agreement and national and international laws.
- They respect the civil rights of others to an open and hospitable environment, regardless of race, sex, color, national or ethnic origin, age, creed, ancestry, religion, disability, or any other legally protected status, and with respect to sexual harassment including e-mailing inappropriate messages.

Clearly you used Marywood's system by emailing to members of its community the above described video using their Marywood email accounts. In doing so, it appears that you used violated copyright laws associated with the use of a copyrighted video, although you are free to prove to us that you obtained permission from the owners of that copyright to publish the video. Even if you did obtain the requisite permission, you failed to respect the civil rights of others by your conduct. I believe I have sufficiently described this conduct above.

4. Violation of Academic Freedom Policy; Professional Ethics Policy and University's Mission and Values as well as the principles of collegiality.

I have attached a copy of your 2011-12 Letter of Agreement and the above policies so that you have them. They can also be found on our website. As an initial matter, your video is not in furtherance of any scholarly pursuit and was clearly not intended to be part of an academic exercise. Nevertheless, even if it were, our policy provides that academic freedom "presupposes, first of all, personal integrity in dealing with students, peers and officers of the University. Second, it presumes scholarly competence, observance of the professional standards of one's discipline, commitment to the stated mission of the University..." As detailed above, your email and video is devoid of personal integrity, has no scholarly competence and is in total disregard of the stated mission of the University.

I hope you will take the time to read the Professional Ethics Policy. In it you will find that you had a "special responsibility," "obligations" to the Marywood community and the obligation to not discriminate or harass your colleagues. Once again, you violated these policies and instead chose to invoke images of hatred and to ridicule your colleagues. Further, as set forth in detail above, you violated Marywood's Mission and Values which are at the core of what this University and all for which this community stands.

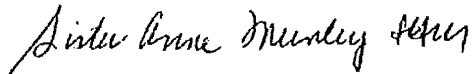
As a result of this recommendation, I am prepared to send this statement of charges to a duly appointed faculty committee for review along with the emails and videos you forwarded to members of our community. In order to do so and out of respect for your privacy, I would ask that you please sign and return to me the attached authorization granting the University permission to do so. That faculty

committee may agree or disagree with my recommendation. Once I receive the review committee's determination, I will finalize my decision. Should you choose to forego that faculty review, I will finalize my recommendation based upon my own findings and conclusions.

Please respond no later than Friday, February 17, 2012.

If you have any questions regarding this matter, you may direct them to me or to Dr. Dunleavy.

Very truly yours,



Sister Anne Munley, IHM
President

Enclosures:

2011-12 Letter of Agreement

Tenure Policy

Civil Rights Policy

Conditions of Computer Use Policy

Academic Freedom Policy

Professional Ethics Policy

Marywood University Mission and Core Values

Release of Personal Information Authorization Form



Marywood

UNIVERSITY

Tenured Faculty
Letter of Agreement
2011-2012 Academic Year

May 10, 2011

Dr. Frederick F. Fagal, Jr.
17 East Lake Street
Skaneateles, NY 13152

Dear Dr. Fagal, Jr.,

This Letter of Agreement is offered to you for the 2011-2012 Academic Year. In accord with the agreed upon Salary Plan, your salary reflects a 2.5% annual increase of \$1,858.00.

Other terms of this agreement are as follows:

Term:	8/22/2011 to 5/18/2012
Type of Appointment:	Full-Time (9 months) Tenure
Rank:	Associate Professor
College:	Liberal Arts & Sciences
Department:	Social Science
Responsible to:	Department Chairperson
Salary:	\$76,196.00

Faculty members must apply for benefits other than Social Security and Worker's Compensation through the Human Resources Department. Full-time faculty benefits include health, dental, long-term disability, group life, and accidental death and dismemberment under the Flexible Benefits Plan. Elections are made by June 1 of each year for the subsequent fiscal year beginning July 1. Retirement contributions by the University vary based on the contribution level selected by the faculty member. The appropriate government forms, including Form W-4 and I-9, must be completed and on file in the Human Resources Department.

This agreement is valid for one month from the date of this letter. The original copy of this Letter of Agreement must be signed and returned to my office by June 10, 2011. If you do not return the original signed copy by June 10, it will be assumed that you are not returning to Marywood. On behalf of the Board of Trustees and myself, I express our gratitude for your dedicated service and commitment to Marywood University. May God continue to bless you.

Sincerely,

Aster Anne Munley

Anne Munley, IHM, Ph.D.
President

Agreed this 25 day of May, 2011

Signature Fredrick F. Fagal, Jr.



Policies and Procedures Manual: Civil Rights Policy



Policy Statement

Marywood University declares and reaffirms a policy of equal educational and employment opportunity and non-discrimination in the provision of educational and other services to the public. Marywood University does not condone and will not tolerate discrimination, harassment, or assault by any member of the Marywood community upon another individual, regardless of whether the action is based on race, sex, color, national or ethnic origin, age, creed, ancestry, religion, disability, or any other legally protected status. Marywood University will make reasonable accommodations to known physical or mental limitations of otherwise qualified individuals with disabilities unless doing so would impose an undue hardship on the University. Any person who believes he or she may require such accommodation should contact the Assistant Vice President for Human Resources and Affirmative Action Officer.

Marywood University is committed to take all necessary steps to comply with any obligations it may have under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Title IX of the Civil Rights Act of 1964, as amended. These are explicit civil and legal applications of the formulation of beliefs already cherished in Marywood's religious commitment, objectives, and practices.

Definitions

Sexual Harassment

Marywood University adopts the following definition of sexual harassment based on the statement endorsed by the American Association of University Professors, revised June 1995, and considers it applicable to the entire Marywood community:

Sexual advances, requests for sexual favors, and other conduct of a sexual nature constitute sexual harassment when:

1. such advances or requests are made under circumstances implying that one's response might affect academic or personnel decisions that are subject to the influence of the person making the proposal; or
2. such speech or conduct is directed against another and is either abusive or severely humiliating and/or persists despite objection of the person targeted by the speech or conduct; or
3. such speech or conduct is reasonably regarded as offensive and substantially impairs the academic or work opportunity of students, colleagues, or co-workers. If it takes place in the teaching context, it must also be severe, pervasive, and not germane to the subject matter. The academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material.

Sexual Assault

Sexual assault is defined as threats of, or deliberate physical contact of a sexual nature that is against another person's will or without consent. Examples of such behavior include, but are not limited to the following:

1. deliberate physical contact of a lewd type, including brushing, touching, grabbing, pinching, patting, hugging and kissing;
2. deliberate or reckless threats, actual or implied, of physical contact of a sexual nature that results in reasonable fear of sexual assault or physical harm;
3. coerced sexual activities, including rape. Rape, the most severe type of sexual assault, is legally defined in Pennsylvania as sexual intercourse that is coerced through force or threats of force, or with someone who is unconscious or with someone who is so mentally deranged or deficient as to be incapable of consent.

Procedures

In furtherance of Marywood University's commitment to its duties and obligations, regular training on harassment, discrimination and related topics is provided for managers and supervisors in the Marywood community.

A list of Marywood University and community resources is available at the Human Resources Office.

History

11/03/97 - Reaffirmed by Board of Trustees and Members of the Corporation

04/15/00 - Revision approved by the Board of Trustees

Mary T. Gardier Paterson, Esquire | Secretary of the University | mtgpaterson@marywood.edu

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Comments to Marywood University Web Development Office: webber@marywood.edu



Policies and Procedures Manual: Conditions of Computer Use



Policy Statement

Users of Marywood University computing facilities and services are held to high ethical standards. These conditions of use are based on the "spiritual, ethical and religious values and a tradition of service" expressed in the Mission Statement of the University. They underscore responsible, ethical, legal, and secure use of the campus-wide information system, and they derive from standards of common sense and common decency that apply to any shared resource. Responsibility extends to access, use of information, and distribution of data.

Marywood University administrators, faculty members, staff, and students may use the computers in all public computing facilities for research work and classroom assignments. Within the limitations of lab scheduling, students have priority over others for use of the facilities. Anyone who is not a currently enrolled student or employee may use the public facilities only at the discretion of University staff. Marywood University does not assume any liability for data loss. Those who use its computers do so at their own risk. Use of administrative computers is authorized with the permission of the appropriate department head.

Access to the Marywood computer system is not a right, but a privilege. When individuals log on to the University's computer system, they become responsible for adhering to University policy and state and federal laws governing individual privacy rights and confidentiality. The following list is not all-inclusive:

1. They respect the privacy of others by not attempting to access their accounts or tampering with their data.
2. They honor the intellectual rights of others by avoiding copyright infringement. This includes all Marywood University-owned computers, i.e., computers purchased with University funds.
3. They respect the policies and procedures of external networks, such as the Internet and systems that can be accessed via the Internet.
4. They do not make or use unauthorized copies of copyrighted or licensed programs or data. They only use authorized copies in full accord with the license agreement and national and international laws.
5. They do not attempt to bypass any security system in order to access privileged information or alter existing interfaces.
6. They do not develop or use programs, transactions, data, or processes that harass other users, infiltrate the system, or damage or alter data or software.
7. They do not develop or use mechanisms to alter University records.

8. They do not load or use personal or existing programs that affect the stability of systems, or use programs in an attempt to hinder or harass others.
9. They do not load software in classroom or computer labs, drop-in facilities, or other University-owned computers.
10. They use only their own User ID and password; rights to individual accounts are not transferable. All members of the University community are responsible for securing their passwords. All passwords are to be treated as confidential University information.
11. They respect the civil rights of others to an open and hospitable environment, regardless of race, sex, color, national or ethnic origin, age, creed, ancestry, religion, disability, or any other legally protected status, and with respect to sexual harassment including e-mailing inappropriate messages.
12. They do not use University owned or operated computers for a personal business.
13. They do not open or download pornographic materials or other materials that violate the Mission Statement of the University.
14. They use resources efficiently, avoiding printing large amounts of unnecessary information or downloading files for long periods of time.
15. They do not damage or alter equipment or software either physically or with a virus. They do not bring food or drink into computer labs, drop-in areas, near computers or computer-related equipment.
16. They abide by an instructor's requirements for computer use, including participation in an on-line course or in a listserv. They honor an instructor's right to allow or disallow use of a computer while the room is in use for instructional purposes. They do not disrupt a class that is being held in a computer lab or other technologically oriented facility, such as broadcast studio or video conferencing room.

Marywood University reserves the right to monitor and record any action performed while using the computer system. An audit trail is kept by system management software. If it is determined that use is contrary to Marywood policy, the appropriate department may examine the user's actions. If computing staff members suspect that any of these conditions are being violated, staff will initiate an investigation through the appropriate agency on campus. During the investigation, the account in question and all computing services may be suspended.

Privacy is neither a goal nor a condition of the University's computing system. There is not an expectation of privacy with regard to the information stored on University-owned or operated computers or, when applicable, other computers attached to the Marywood University network; and there are no specific laws, rules, or regulations that protect the privacy of a user's files, electronic mail messages, or any other information retrieved as a result of a person's session on the Marywood system.

While Marywood University respects an individual's privacy whenever possible, it does have and will exercise its right to examine a University-owned or operated computer and its contents if there is a reasonable indication that it has been used to download or store illegal materials, such as pornography or illegal software.

Marywood University reserves the right to report suspected criminal offenses to civil authorities. Institutional disciplinary charges may be filed in addition to civil actions.

These conditions of use have been established for the protection of all users but provide neither absolute security nor unqualified privacy.

Definitions

System is used in a generic sense to refer to the aggregate of all hardware and software owned or licensed by Marywood University, including the network.

As a general matter, **copyright** infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner.

Procedures

Contact the Office of Information Technology with questions about

- computer network support of instructional, research, and service activities;
- computer network support of administrative activities;
- voice and data network design and maintenance, desk-top computer repairs and installations.

Related Policies

- Website Policy
- University Website Policy

Related Committees

Technology Advisory Committee
Academic Computing Advisory Committee

History

01/10/97 - Recommended to the President by the College Committee on Policy
02/06/97 - Approved by the President of the University with publication of The President's Memo
04/17/04 - Revision approved by the President of the University as recommended by the Policy Committee of the University
02/20/09 - Procedures changed in order to direct all questions to the Office of Information Technology

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Policies and Procedures Manual: Academic Freedom



Policy Statement

Marywood University affirms its commitment to academic freedom. In so doing, it reaffirms its commitment to the tradition of higher learning that is the heritage of both the Roman Catholic Church and the nation. It is a tradition grounded on respect for truth, social responsibility and individual rights. It is a tradition that posits freedom of inquiry, open discussion and unrestricted exchange of ideas as essential to the pursuit of knowledge.

Marywood University upholds academic freedom as a fundamental condition for research and dissemination of information. The University is a center of discourse where inquiry is encouraged and discoveries are verified and refined by the interaction of scholar with scholar. Marywood University respects the right and responsibility of its faculty and students to conduct research, to publish their findings, and to discuss ideas according to the principles, sources and methods of their academic disciplines. These principles, sources and methods, as they develop over time, are not external to their respective disciplines. The University sanctions and encourages investigation of unexplored phenomena, advancement of knowledge, and critical examination of ideas, old and new. The University accepts the responsibility of protecting both teacher and student from being forced to deny truth that has been discovered or to assert claims that have not been established in the discipline. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching material matter that has no relation to their subject.

Where the faculty is concerned, academic freedom presupposes, first of all, personal integrity in dealing with students, peers and officers of the University. Second, it presumes scholarly competence, observance of the professional standards of one's discipline, commitment to the stated mission of the University, and openness to having one's ideas and findings subjected to the judgment of one's peers. Third, faculty members have a responsibility as professional scholars to be accurate and judicious in their public statements, and respectful of the opinions and responsibilities of others.

Related Policies

- Professional Ethics
- Evaluation of Faculty Members
- Faculty Status

Related Committees

Institutional Review Board for the Protection of Human Participants

History

12/01/79 - Reaffirmed with publication of *Faculty Manual*

07/01/93 - Introduction and postscript added

07/01/03 - "Human Subejcts" changed to "Human Participants"

02/19/10 - Revision approved by the President of the University as recommended by the Policy Committee of the University

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Policies and Procedures Manual: Professional Ethics



Policy Statement

The American Association of University Professors recognizes that membership in the academic profession carries with it special responsibility. The Statement on Professional Ethics that follows sets forth general standards assumed by members of the profession.

Professors, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognize the special responsibilities placed upon them. Their primary responsibility to their subject is to seek and to state the truth as they see it. To this end, professors devote their energies to developing and improving their scholarly competence. They accept the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. They practice intellectual honesty. Although professors may follow subsidiary interests, these interests must never seriously hamper or compromise their freedom of inquiry.

As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly and ethical standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to assure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom.

As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates. In the exchange of criticism and ideas, professors show due respect for the opinions of others. Professors acknowledge academic debt and strive to be objective in their professional judgment of colleagues. Professors accept their share of faculty responsibilities for the governance of their institution.

As members of an academic institution, professors seek above all to be effective teachers and scholars. Although professors observe the stated regulations of the institution, provided the regulations do not contravene academic freedom, they maintain their right to criticize and seek revision. Professors give due regard to their paramount responsibilities within their institution in determining the amount and character of work done outside it. When considering the interruption or termination of their service, professors recognize the effect of their decision upon the program of the institution and give due notice of their intentions.

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their

subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Related Policies

- Teaching Responsibility
 - Librarianship Responsibility
 - Faculty Status
-

History

07/01/89 - Reaffirmed with publication of Faculty Manual

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President's Page: Marywood University Mission & Core Values

Mission Statement

A Catholic university sponsored by the Congregation of the Sisters, Servants of the Immaculate Heart of Mary, Marywood University roots itself in the principle of justice and a belief that education empowers people. Enacting its ideals, Marywood offers students a welcoming and supportive community that encourages men and women of all backgrounds to shape their lives as leaders in service to others. Proud of its liberal arts tradition and host of professional disciplines, Marywood challenges students to broaden their understanding of global issues and to make decisions based on spiritual, ethical, and religious values. Marywood calls upon students to seek their full potential and invites all to engage in a lifelong process of learning. Witnessing the efficacy of teaching and scholarship, Marywood educates students to live responsibly in a diverse and interdependent world.

Core Values

Catholic Identity

A commitment to spiritual, ethical and intellectual values in the context of a faith community.

Respect for Each Person

Respect for the value of each human being, for diversity in the context of vibrant community, and for the earth and all creation.

Empowerment

Education to enable access and to empower the underserved to take a full role in the life of the broader society.

Service

Rooted in the deep belief that learning and scholarship serve the global community is the belief in the value of the diverse types of work that support that service, and the preparation of students for leadership by participation in service.

Commitment to Excellence

The belief that the work of education has the capacity to forward the kingdom of God, in broad and varied ways, leads us to care passionately for the quality of the mission of Marywood.

President's Office | Fran Ferrese, Executive Secretary | (570) 348-6231 | ferrese@marywood.edu

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President's Page: Marywood University's Goals & Objectives

Provide a values based context for university experiences.

- A majority of students will participate in service opportunities in an on-going way.
- Students will demonstrate an understanding of the ethical dimensions of their fields of study.
- A majority of students will participate in spiritual development activities.
- Employees will demonstrate core values in the work place.

Foster an awareness and appreciation of the pluralistic nature of contemporary society.

- Graduates will choose to study or work in multicultural settings either at home or abroad.
- Students will demonstrate a deeper appreciation for cultural diversity and an understanding of global issues.
- Enrolled students will travel abroad during their college years.
- Employee groups and governing bodies will reflect the pluralistic nature of contemporary society.

Provide a supportive and welcoming environment to a diverse academic community.

- Students enrolled in any program will fulfill their academic goals by successfully completing their degree work.
- An increasing number of racially and culturally diverse students and employees will choose Marywood as a welcoming community.
- Students from a cross-section of socio-economic groups will enroll in each incoming class.
- Campus constituencies will express satisfaction with all campus services.

Prepare people for socially responsible leadership roles.

- Students will participate in an internship or practicum experience.
- Students will demonstrate a significant level of co-curricular activities.
- Students will experience positive interactions with faculty members outside of class.
- Employees will serve as role models of socially responsible leaders.

Provide a challenging instructional program.

- Students will demonstrate achievement of cognitive skills at a level comparable to peers on standardized tests.
- Students will demonstrate the ability to think critically by engaging in research activities and by developing problem solving strategies.
- Students will demonstrate the ability to integrate the liberal arts tradition with their professional specializations.
- Students will demonstrate competence in both information literacy skills and communications skills.
- Faculty will provide evidence of ongoing scholarly activity.

Inspire a sense of personal responsibility for responding to social justice issues.

- Faculty, staff, and students will participate in projects designed to address social inequities.
- Students will demonstrate knowledge of both national and international social justice issues.
- Faculty, students, and staff will serve as advocates for justice in their personal and professional lives.

President's Office | Fran Ferrese, Executive Secretary | (570) 348-6231 | ferrese@marywood.edu

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Release of Personal Information

Please check one box below; sign, date, and return by February 3, 2012

☐ I DO NOT grant permission for Marywood University to release Sister Anne Munley's Recommendation for Termination and Statement of Charges dated 1/24/12 to a faculty review committee comprised of tenured faculty. I understand that by refusing such permission that there will be no faculty committee review of Sister Anne Munley's decision to terminate my tenure and employment with the University prior to it being finalized.

OR

☐ I DO grant permission for Marywood University to release Sister Anne Munley's Recommendation for Termination and Statement of Charges dated 1/24/12 to a review committee comprised of tenured faculty.

This authorization is valid until rescinded by me in writing.

Frederick F. Fagal, Jr.

Date

Exhibit 18



The rise, rise and rise of the Downfall Hitler parody

By Finlo Rohrer
BBC News Magazine

Five years ago Downfall's release saw the German film acclaimed for its portrayal of Hitler's last days. But since then it has become almost as famous for a wave of internet parodies of its climactic scene.

Hitler is angry.

Very angry indeed. Angry enough to order all but his most senior generals out of the room so he can vent his rage.

WHAT IS A MEME?

- Coined by Richard Dawkins in 1976, and roughly meaning the cultural equivalent of a gene
- He described: "A unit of cultural transmission, or a unit of imitation... Examples of memes are tunes, ideas, catch-phrases, clothes fashions, ways of making pots or of building arches."
- Internet meme: An idea that spreads through the internet, or the spread of that idea

He is angry because Cristiano Ronaldo has been sold to Real Madrid. Or because the ending of Watchmen has been changed. Or that Hillary Clinton has lost the Democratic presidential nomination. Or that Kanye West interrupted Taylor Swift at an awards show.

It's become one of the best known "internet memes" around, a comic construct that has spread inexorably on YouTube and other platforms like a cultural version of Japanese knotweed.

In the original movie, the climax for many viewers might be the moment in the bunker when Hitler is told of the failure of General Felix Steiner to gather enough troops for an attack to ward off the Soviet advance on Berlin.

" It is by word of mouth, or word of tweet "

Bill Thompson On the spread of the Downfall parody meme

In this three-minute, 50 second scene, Hitler, played by Bruno Ganz, plunges between frothing vitriol and terrifying suppressed emotion as he confronts his top generals. The rest of the staff, standing in the corridor outside, listen rapt to the exchange.

But the parody makers have taken this clip, put it through a programme like Movie Maker or iMovie, and added their own subtitles, synced as closely as possible to the audio.

In some parodies, Hitler is being the public figure that is lampooned - Hitler becomes Hillary Clinton losing the nomination, or BBC chief Mark Thompson having to face Jeremy Paxman. But in many of the parodies, Hitler is simply reacting to events, the relegation of Sheffield Utd or Usain Bolt breaking the 100m record.

It is not an obvious subject for humour. Yet for millions of internet users there is something hilarious about this scene being turned on its head.

There is no clear explanation why this category of parody should have proved such a hardy internet meme, says technology writer Bill Thompson.

"It was just lucky. There is no particular reason why Downfall should have taken off."

YouTube launch

Every day in bedrooms all over the world there are bedroom comedians dreaming of creating something that will spread like wildfire. Most of their work goes unregarded, but to Thompson, they are the inheritors of the punk ethos.

"Maybe Downfall was in the right place at the right time. It coincided with the launch of YouTube.

FIVE POPULAR DOWNFALL PARODIES

- Hitler gets banned from Xbox Live: 4,260,975
- Hitler finds out Kanye West Disses Taylor Swift: 1,067,024
- Usain Bolt Breaks 100m World Record: 1,096,241
- Ronaldo leaves Utd: 1,439,671
- Hitler Finds Out Sarah Palin Resigns: 497,903 Stats taken on 13 April. Source: YouTube

"Once it becomes successful it is unstoppable. It is by word of mouth, or word of tweet. The internet does what it was designed to do. It enables two-way communication."

As with any internet meme, the precise origins are unclear. But the credit for perhaps the most popular version, Hitler gets banned from Xbox Live, which has racked up more than 4.2 million users, was claimed by British student Chris Bowley.

Since then the range of topics covered has been too numerous to list.

And the film company behind Downfall, perhaps understandably, prefers to focus on the acclaim for the movie and the \$100m it grossed at the box office.

"The impact of the movie has been tremendous, both on a commercial and on an artistic level," says Martin Moszkowicz, an executive at Constantin Film.

Ambivalent view

The parodies have caused some issues.

"We as a corporation have a bit of an ambivalent view of it. On the one hand we are proud the picture has such a huge fanbase and that people are using it for parody. On the other hand we are trying to protect the artists."

As such Constantin Film has caused many of the parodies to be removed from YouTube and elsewhere.

"It is a task that can never be completed. They are popping up whenever we are taking one down," Mr Moszkowicz admits.

But while many people who have seen the parodies before seeing the film may have a strange feeling of deja vu when they get to the climactic scene, it won't ruin things for them, says Daily Telegraph film critic David Gritten.

"Some of them [the parodies] are absolutely wonderful. [But] I can't imagine it would ruin anyone's enjoyment of it.

"Ganz's portrayal of Hitler is so entirely full-on, so entirely convincing. He sears himself on your eyeballs."

And the Downfall parody meme has gone so far, that there are numerous versions sending up the whole meme itself.

In What does Hitler think of the Downfall meme?, Hitler rants: "This joke stopped being funny in 2008. This was only half-way clever the first time around."

"It's really the nature of the internet that once something reaches a critical mass it starts perpetuating itself out of its own momentum," says creator Andy Nordvall, who uses the name Masters of Humility. "The sheer randomness and seeming arbitrary nature of what goes viral becomes part of the viral-ness itself."

And at the heart of the craze is the ease of joining the bandwagon.

"Just find the clip online, subtitle it, and voila, you're a filmmaker. It's intoxicating just how easy it is to make your own Downfall parody."

Of course, some of the parodies are inevitably controversial.

International appeal

A Hebrew-subtitle version bemoaning the lack of parking in Tel Aviv caused some consternation in Israel last year. But it shows the international appeal of the meme.

There have been parodies everywhere from Poland to Malaysia.

And some may draw positive conclusions from the idea of young people now feeling comfortable lampooning Hitler.

Downfall director Oliver Hirschbiegel told a magazine earlier this year that he had seen many of the parodies and could see the merits of the idea.

In many ways the parodies take things full circle. Allied propagandists at the beginning of World War II tried to paint Hitler as an undignified, cartoonish and flawed character, thinking this would better serve morale than the image of a remorseless, evil mastermind.

And the creation of a human but still evil Hitler is what Downfall was setting out to achieve.

Below is a selection of your comments.

There are two levels that the meme's humour works on. The first and most obvious is seeing a once-feared man reacting to seemingly banal news with intense emotion. The one where he finds out Pokemon aren't real is really very good fun. The second level is seeing a video reflecting on modern issues put together with good timing. There's one about scientific peer review where Hitler rages about the third reviewer on a journal article he's trying to submit. It's funny to anyone who understands the topic because you can easily imagine the vitriol from any professor, and there aren't many research students who haven't made the dictator analogy to their own professor at some time or another. **Sen, Edinburgh**

This meme is so popular because it can be attached to so many events. The leader asks a question about progress, the supporters give him the bad news, the leader expresses concern about what he thought was happening, the supporters repeat the bad news, the leader realises that the challenge has been lost and describes all the opportunities they will now never achieve. The original happens to be about a dark period in history but the key story sequence occurs every day for all of us. I am so looking forward to a few UK Election versions. **Martin, Milton Keynes, UK**

BBC - come on. The best parody (in my opinion) is Hitler hearing about the Oasis split. 700,000+ views. Who does your research? Hilarious. **Dazzla, London**

There are two main types of this meme - the long one showing Hitler exploding with rage when he's told Steiner's attack didn't happen, and a shorter one where Günsche tells Hitler they can't find Fegelein. The first works because we can all identify with someone raging at something not going as planned, and the second works because all of those are just surreal - using such themes as Hitler discussing the pros and cons of Wii Sports Resort etc. **Bruce Antell, Newmarket, England**

As a German teacher I understand everything the actor is saying in the original film so its hard for me to appreciate the subtitled jokes. Mostly I am just sick of seeing the same thing done over and over again. **Vernon, Atlanta, USA**

The popularity of this clip is a clear indication of how access to technology has led to the democratization of the dissemination of information, and our ability to now make OUR voices heard in a way that frightens politicians, big business, teachers, institutions, and the established media industry. This clip is often a valuable and far-reaching tool for social commentary, while being an entertaining way of publicising one's position on any number of issues. **David Green, St John's, Canada**

Taking two polar opposites and joining them seamlessly is a standard source of humour. Hitler represents the very depths of human depravity, but when joined with utter triviality like the lack of features on the iPhone or a lukewarm response from the local WI, and the conjunction is always likely to be very funny. **KD, Guildford**

Well that's finally killed off this meme for good. The only thing that can kill a well established meme is mainstream publicity. **Jingo, Yorkshire**

Story from BBC NEWS:

http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/magazine/8617454.stm

Published: 2010/04/13 10:59:14 GMT

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Exhibit 19

Hitler Downfall parodies: 25 worth watching

Subtitled parodies of Adolf Hitler's last days in the Berlin bunker, as depicted in the 2004 Second World War film Downfall, have become one of the web's most enduring memes.

7:00AM BST 06 Oct 2009

The Nazi dictator's spittle-flecked rants have proved their remarkable versatility in hundreds of spoof clips, from sporting rages to economic polemics to video game reviews.

ADVERTISING



inRead invented by Teads

The parodies are so ubiquitous on YouTube that they have even spawned self-referential meta-parodies - jokes about Hitler learning about his internet fame.

In celebration of the success of the parodies - and with half a hope that their popularity may at last be fading - we have selected what we believe are the 25 funniest versions. If you disagree, let us know in the box at the bottom.

Anyone unfamiliar with the clips should be warned that many of the "translations" contain strong language.

Meta-parodies

1) Hitler finds out about the Downfall meme

Best line: "I slaughtered millions, cut a bloody path of destruction across Europe, and for what? So I could be the latest juvenile web fad, no better than YouTube Fred or that stupid f-----g hamster?"

2) Hitler rants about being stuck in slow motion

Best line: "Why me? I have done nothing to justify this. I'm the least amusing person around, dammit."

3) Hitler finds out that 'Hitler' has become a throwaway term of abuse

Best line: "I have been wearing this ridiculous thing for years so that it might be the very symbol of evil. Not some convenient talisman for unthinking Americans."

4) Hitler phones 'fake' Hitler

Best line: "Go to Wikipedia, it clearly says that he died on the 30th April 1945."

5) Hitler orders removal of Downfall parodies for breach of copyright

Best line: "Fair use! Don't give me fair use! This is OUR movie!"

Technology and gaming**6) Hitler finds out there will be no camera in the iPod Touch**

Best line: "El Jobso goes away for how many months? Comes back and f---s everything up!"

7) Hitler laments the decline of Second Life

Best line: "I tried to go there last night, to reassure myself. I still like it, I rode the segway... BUT I COULD NOT FIGURE OUT HOW TO GET OFF IT! THEN I GOT STUCK IN THE GROUND!"

8) Hitler finds out he has been banned from Xbox Live

Best line: "I'm left only with my s----y N64. I am truly f----d now. God dammit! I mean how much fun can you have with Super f-----g Mario!!!"

9) Hitler finds out he has been banned from RuneScape

Best line: "The Russians are a bunch of noobs."

10) Hitler finds out Twitter has gone down again

Best line: "Don't they care about their users? Don't they care about us Tweeples?"

Sport**11) Hitler finds out Frank Lampard is signing for Inter**

Best line: "If you supported the signings of Boulahrouz, Anelka and especially Crespo, leave."

12) Hitler finds out Sheffield United have been relegated

Best line: "And to make matters worse, it's Unsworth who scores. IT'S UNSWORTH WHO SCORES."

13) Hitler finds out Newcastle United have been relegated

Best line: "How about this, we have a different manager for each game next season? We couldn't do any f-----g worse. Maybe get the deluded fans in? We'll hold a lottery, draw a f-----g ticket each week for the deluded fools. Offer a platinum seat if they manage a win."

Politics**14) Hitler reacts to the sub-prime mortgage crisis**

Best line: "I had a 'liar's loan', bogus appraisal, and was on the path to riches!"

15) Hitler finds out about Sarah Palin's resignation

Best line: "Every time she winked, I thought it was just for me."

16) Hitler plans to heckle Barack Obama

Best line: "You should disguise yourself as John McCain. We still have that John McCain Hallowe'en mask"

Internet culture**17) Hitler denies that the cake is a lie**

Best line: "The cake is not a lie, I have eaten it. Yep that's right. It was very nice. Nom nom."

18) Hitler phones the talking cat

Best line: "I don't know why I bothered calling that cat. He was so drunk he could not speak properly."

19) Hitler finds out about the 'NHS food bingo' blog

Best line: "I didn't run up the biggest budget deficit in the history of this country so that some provincial hack could take the piss out of good, wholesome NHS food, food which the ungrateful b-----d is getting for free."

20) Hitler plans to start trolling forums

Best line: "I'm going to post any crap to any other users. I will be disrupting normal on-topic discussion."

Miscellaneous**21) Hitler attacks grammar 'Nazis'**

Best line: "You guys are like some kind of grammar authorities or some, some kind of grammar... strict police... dammit! What's the word I'm looking for? I'm thinking of an authoritarian regime or something with the streets filled with like uniformed soldiers that arrest people for the slightest offence. It was on the tip of my tongue, god damn it. Well, you know what I mean."

22) Hitler can't find Wally

Best line: "Everyone tells me to keep looking. But that's what I try to f-----g do and yet I still f-----g fail to find that sodding Wally. F-----g morons. F--- I want to find Wally."

23) Hitler finds out his friends aren't going to Burning Man festival

Best line: "And what about Bill? He claims he likes camping. So what's the problem, no bistros on the playa?"

24) Hitler finds out about changes to Oktoberfest

Best line: "That beer redefined the Bavarian purity law!"

25) Hitler finds out Oasis have split up

Best line: "This is a f---g joke. Their last album was brilliant! A real return to form after two admittedly under-par recordings. And my tickets were for the mosh-pit too."

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Exhibit 20

The Atlantic

Führer Humor: The Art of the Nazi Comedy

Many parodies of Adolf Hitler and the Third Reich focus on getting laughs at the expense of reflection.



Constantin Films

DANIEL A. GROSS

DEC 20, 2015 | CULTURE



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At the beginning of the recent German film *Look Who's Back*, Adolf Hitler wakes up in a courtyard from a long and uncomfortable sleep. He staggers to his feet. Then

he wanders the streets of Berlin, nearly colliding with a Segway tour and eventually arriving at a drab newspaper stand. Here he learns that it's 2014, that Poland still exists, and that bars of plastic-wrapped corn syrup are sold for a currency called the Euro. It's a strange time to be a Nazi.

RELATED STORY



[The Almost-Forgotten Jewish Artist Who Propagandized Against Hitler](#)

Seventy years after the end of World War II, Nazi comedies have evolved into a bizarre and thriving genre of their own. Most of these films reuse the same basic joke: An impossibly powerful man does a series of impossibly silly things. In *Look Who's Back*, which is based on the 2012 novel by Timur Vermes, Hitler slips into a pair of mom jeans and a sunflower-yellow sweater. In *Mein Führer: The Really Truest Truth About Adolf Hitler* (2007), he takes a bubble bath with a toy battleship. In a [spoof music video](#) called *Ich hock' in meinem Bonker* (2006), he sits naked on the toilet, singing: "World War II isn't fun any more!"

It can be comforting to laugh at Hitler. Laughter helps audiences feel that they've overcome evil—that a mass murderer is not only safely locked away in the history books, but also somehow defanged. During World War II, anti-Nazi propaganda aimed to make Hitler look either incredibly evil or utterly ridiculous. Modern-day Nazi comedies have adopted the same basic tactics, from silly costumes to "Heil" jokes to caricatures of the German language. The problem with most contemporary Nazi comedies isn't that they're offensive or humorless. It's that they tend to be humorous and not much else.

While it takes courage to laugh in the face of evil, most Hitler parodies leave the audience laughing *instead* of facing evil. Comedies that borrow from history—whether from dictators (*The Interview*), entire cultures (*The Ridiculous Six*), or religious figures (*South Park*, *Black Jesus*)—have to reckon with historical baggage, too. These works could make audiences feel more connected to the past, more aware of injustice. But to do that, they need to aim for more than just laughter.

When Charlie Chaplin released *The Great Dictator* in 1940, he declared grandly that his parody had a purpose. “Pessimists say I may fail—that dictators aren’t funny anymore, that the evil is too serious,” he told *The New York Times*. “That is wrong. If there is one thing I know it is that power can always be made ridiculous.” *The Great Dictator* wasn’t pandering to an audience of Hitler-haters, however. At the time, despite German aggression in Europe, American politicians wanted to stay out of the war. Chaplin’s studio warned him that the government might censor the film; he received letters from people who threatened to cause riots or attack screenings with stink bombs. He later recalled that at the film’s opening “the laughter was there, but divided. It was challenging laughter against the hissing faction in the theater.”

The Great Dictator- Globe Scene



Yet the resistance to *The Great Dictator* was exactly what made the film necessary. In one scene, Chaplin’s stand-in for Hitler dances like a greasy-haired ballerina. He accidentally pops a balloon globe, which makes him cry. “He is one little man with the whole wide, vast unconquerable world, and he thinks the world is his,” Chaplin told *The Times*.

Chaplin's defense of *The Great Dictator* amounts to a simple theory of political satire. When his version of Hitler cries, viewers laugh, because there's such an absurd dissonance between the historical and the hysterical Hitler. And by making viewers laugh, the film invites them to question the status quo, turning reverence for a powerful man into irreverence. With each laugh, the audience can perhaps become more resilient.

Chaplin came to believe that satire has boundaries, however. Some reviewers argued that it was irresponsible to make light of dictatorship—and he eventually agreed with that critique. “The laughter chokes suddenly and is reluctant to start again,” wrote Otis Ferguson in *The New Republic*. More than 20 years later, in 1964, Chaplin wrote in his autobiography: “Had I known of the German concentration camps, I could not have made *The Great Dictator*; I could not have made fun of the homicidal insanity of the Nazis.” In his view, certain topics are simply too horrifying to ridicule.

The arguments for and against *The Great Dictator* can serve as a yardstick for the uses and abuses of satire. Chaplin articulated a good reason why filmmakers shouldn't make fun of mass murderers—but he also found a relatively elegant way to do just that. The question is whether Nazi parodies in peacetime, particularly those made in Germany, succeed at the same challenge.

* * *

In 2004, the German production company Constantin Films released *Downfall* (*Der Untergang*), a film about the final days of Adolf Hitler's life. Like many German war movies, it's bleak, self-effacing, and sincere enough to seem clichéd. For most of the film, Hitler (played by Bruno Ganz) looks weary and broken. Then his advisers inform him that the shattered German military cannot protect Berlin, and Hitler erupts in a fury that echoes through his bunker.

Even if you've never seen the film, chances are good that you've at least seen this scene—or rather, this meme. Some parodists added subtitles that made it seem like Hitler was enraged by the late delivery of a pizza, or the break up of the Britpop

band Oasis, or the [parking situation in Tel Aviv](#). (This kind of clever editing wasn't new—it was actually used to parody Nazis [as early as 1941](#)—but in 2009 it was infectious.) In the same way that the word “Nazi” can serve as shorthand for tyrannical people, Hitler is an easy target because he's such a powerful, global, and simple symbol. When the character of Hitler screams about pizza, it's as if evil itself is throwing a tantrum.

By taking an intensely serious subject and making it silly, *Downfall* parodies use the same basic formula as other Nazi comedies. As Chaplin showed, it's possible to feel a twisted satisfaction in watching a dictator squirm. In one parody, [Hitler complains](#) about all the parodies: “I'm stuck endlessly complaining and complaining, like some whiny-ass bitch!”

On the other hand, you don't have to look far to find echoes of Chaplin's concern that certain topics shouldn't be laughed at. In 2010, Constantin Films launched a legal campaign to remove “Unterganger” parodies from YouTube, claiming they simply wanted to protect their copyright, but also citing groups that considered the videos offensive. Abraham Foxman, then national head of the Anti-Defamation League, [told the Associated Press](#): “We feel that they trivialize not only the Holocaust but World War II. Hitler is not a cartoon character.”

The company didn't have much luck keeping *Downfall* parodies off the Internet. “It is a task that can never be completed. They are popping up whenever we are taking one down,” one executive [told the BBC](#). Comedy is persistent, which might be why it's so comforting. Hitler was defeated in 1945, but the onslaught of Hitler jokes is like a ritual celebration of his defeat.

Strangely enough, some of the videos actually echoed Chaplin's and Foxman's objections. In the same meta-parody where Hitler complains about *Downfall* parodies, Hitler shakes his fists and declares: “I thought my legacy was secure! I slaughtered millions. Cut a bloody path of destruction across Europe. And for what? So I could be the latest juvenile web fad?” By making fun of Hitler, the video suggests, we run the risk of associating him with YouTube instead of Auschwitz—with mass media instead of mass murder.

Constantin Films, like Charlie Chaplin, eventually changed its tune. In a puzzling reversal, the company signed on to produce and distribute *Look Who's Back*—in which Hitler takes off his underwear at the dry cleaner's, shoots a puppy because its yap annoys him, and becomes a YouTube star. While Chaplin moved from irreverence of the Nazis to reverence for their victims, Constantin moved from a straight-faced Nazi drama to a slapstick Nazi comedy. *Look Who's Back* even parodies the very *Downfall* scene that the company tried to scrub from the Internet.

There are a few ways to interpret this shift. Maybe by participating in a joke they once denounced, they're hoping to prove that they're not a bunch of killjoys. Or, more likely, maybe they just saw an opportunity to make money from what's become one of 2015's most successful German films. The most interesting explanation, though, is that *Look Who's Back* isn't really a comedy about Hitler. It's a comedy about the way Germans *remember* Hitler. The film is Germany's version of *Borat*—a film that mixes fact and fiction, inviting real discrimination in order to lampoon it. In spite of its silliness, it makes an important argument about Germany's relationship to its past.

The premise of *Look Who's Back* is that, in 2014, Hitler comes back to life—but he seems so out of place that ordinary Germans assume he's a kooky comedian instead of a brutal dictator. That's a sign that World War II has receded in collective memory: Today, Nazi Germany can seem like a costume drama instead of a terrifying historical period. Early in the film, he walks through crowds of tourists at the Brandenburg Gate. Some of them giggle and take selfies with him; others act nostalgic for the 1930s.

***Look Who's Back* isn't really a comedy about Hitler. It's a comedy about the way Germans *remember* Hitler.**

These documentary-style scenes, which slot into the fictional scaffolding of the story, hint at a purpose behind the parody. When Hitler visits a dog breeder and muses that humans should also have breeders, the dog breeder enthusiastically

agrees. When he visits members of Germany's strongest far right-wing party, they think his costume is a hoot. Maybe it's not such a strange time to be a Nazi.

During the climax of the film, the TV producer who discovered Hitler finally realizes that his collaborator isn't a comedian. He's the genuine article, the Führer himself. After a moment of horror, he decides to assassinate Hitler. But when the moment finally comes, the producer fails miserably. Hitler rubs it in. "You can't get rid of me," he says. "I'm a part of you."

* * *

Germany can't get rid of Hitler, not because most Germans support or miss him, but because they define themselves *against* him. Maybe that's the best defense of Nazi comedies. Every time Hitler dies on a movie screen, every time he's reduced to a pathetic and bumbling fool, society reasserts its loathing for Nazism. Films that ridicule past injustice can help distance society from a history we'd rather not repeat. But that distance is also the key disadvantage of Nazi slapstick. When audience members laugh at *The Great Dictator* or parodies of *Downfall*, it can become harder to imagine the thoughts or motivations of actual Nazis.

There's a place for that kind of irreverent humor. But as the world loses the last generation that actually remembers World War II, there's also a place for humor that doesn't take history for granted. Unexpectedly, *Look Who's Back* tries to do just that. It ends with a reel of bystanders who wave cheerfully at the modern-day reincarnation of Hitler. As the credits roll, so do clips of neo-Nazi parades, as if to highlight how little progress the world has made.

Germany really can't get rid of Hitler, because Germans define themselves *against* him.

At the beginning and end of *Downfall*, there's a brief clip from an interview with Traudl Junge, who worked as Hitler's secretary until the day he killed himself. She recalls learning after the war about the mass murder of Roma, Sinti, Jews,

homosexuals, and the disabled. “But I wasn’t able to see the connection with my own past,” she says. “I was satisfied that I wasn’t personally to blame.” This, of course, is a recurring theme in German history—the alibi of the bystander, the argument that we have no responsibility for what we don’t know or can’t change.

“But one day, I went past the memorial plaque which had been put up for Sophie Scholl,” Junge continues. Scholl was executed for handing out anti-Nazi leaflets in 1943—the same year Junge started working for Hitler. “In that moment I actually sensed that it was no excuse to be young. That maybe it would have been possible to find things out,” she says.

This is the kind of intimacy and complexity that parodies of *Downfall*—and Nazi comedies in general—tend to edit out. And it’s of course the parodies of *Downfall*, not the original film, that have attracted tens of millions of views. At their best, Nazi comedies can help audiences look to the past and reinterpret the present, so that they ultimately see injustice more clearly. But at their worst, they just allow viewers to look away.

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ABOUT THE AUTHOR

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Exhibit 21

The New York Times**PERSONAL TECH**

Video Mad Libs With the Right Software

By PAUL BOUTIN FEB. 24, 2010

It is April 1945. In his underground bunker, Hitler huddles over a map with his top generals. The room is insufferably tense. Members of the German high command, sweating in their uniforms, wonder who will dare to break the terrible news to Der Führer.

“The iPad won’t support multitasking,” one general confesses. Hitler erupts in impotent rage, “I wanted to watch videos of lolcats while laying on the couch. But no, they won’t even give it Flash support.”

This four-minute video, available on YouTube, is one of hundreds of goofy edits to the English subtitles of a powerful scene from a 2004 German-language movie titled “Downfall” in the United States. In various home-subtitled remakes over the last few years, Hitler explodes when told that the McMansion he was trying to flip is in foreclosure, that the band Oasis has split up, that the Colts lost the Super Bowl or that people keep making more “Downfall” parodies. When Hitler learns Sarah Palin has resigned as governor of Alaska, he pounds his chest. “Every time she winked,” he moans, “I thought it was just for me.”

Making your own Hitler video turns out to be refreshingly easy, which is why so many of them can be found on YouTube. All you need is a PC and Microsoft’s Movie Maker, a program included with both Windows XP and Vista. (If you run the new

Windows 7, you will need to download the old Movie Maker 2.6, rather than the new but less powerful Windows Live Movie Maker. If you're a Mac user, Apple's built-in iMovie application will handle the job.)

Once Movie Maker is running, download a scene from "Downfall" at www.mediafire.com/downfallszenes. "Original bunker scene" is the most popular. Save it to the desktop, then choose File->Import from Movie Maker to load it for editing. It appears in Movie Maker as a series of consecutive clips. At the bottom of Movie Maker's window is what's called a timeline. Drag each clip, from first to last, into the timeline, keeping them in the same order.

To add a subtitle, click the magnifying glass button to zoom in on a clip. The audio soundtrack is represented as sound waves, so you can see exactly where each speaker's lines begin.

Align your subtitle's appearance onscreen to the start of each spoken sentence, so viewers aren't left hanging. To do this, drag the vertical location bar in the clip's window until it matches the left-hand starting point of an actor's sound bite. It's your call how long to leave the subtitle onscreen. Give people time to read it.

Next, select the menu item Tools->Titles and Credits->Add Title. Go to the selected clip and choose Change Title->Animation->Select Subtitles. Click "Edit the title text" and type in your dialogue. Then use the font controls — the A button onscreen — to shrink the text size. Make the letters white, for contrast against the movie.

Once you have added one subtitle, the easy way to add the rest is to cut and paste your first one over and over. Then you won't have to redo the font settings each time, you just change the words.

When you are finished, choose File->Save Movie File and save the edited movie in WMV format. Play it on your desktop with Windows Media Player, to be sure it works.

Ready for your worldwide premiere? Go to YouTube and create a free personal account if you don't have one. You can then upload your Hitler remix to YouTube for

everyone on the Internet to watch. For more help and ideas, join the Downfall Parodies Forum at s1.zetaboards.com/downfallparodies.

Once you have mastered editing Adolf, you may want to tackle the more time-consuming Internet hobby of remixing movie trailers from one type of movie into something totally, hilariously different. By changing the music, inserting shots out of context, and adding a bit of titles or voiceover, it's possible to concoct a trailer that makes "Mary Poppins" seem like a Stephen King scarefest, or to spin King's macabre "The Shining" as a heartwarming family tale.

In fact, these are the genre's two classics. Shining is a mock trailer buoyed by an uplifting Peter Gabriel tune, in which the thwarted novelist played by Jack Nicholson regains his self-esteem because of the patient love of a little boy. (In the real movie, Nicholson goes insane and dies trying to kill the child.) Scary Mary goes the other way, splicing together scenes that display Julie Andrews' telekinetic powers with her most menacing scowls from the film. Spooky music makes the shots from Disney's musical seem like sheer terror.

To create a trailer, it is best to turn to semi-pro software like Vegas Movie Studio 9 from Sony, available for around \$50 online. (Apple users, splurge on Final Cut Express, closer to \$150.) There's no magic here. It's work. Prepare to spend a weekend building your own one-minute timeline from scratch, cutting and pasting scenes from the full movie into your program, adding a music track and creating titles.

Some trailer buffs even record a voiceover in the style of the late Don LaFontaine: "In a world ... ruled by fear ... one man ... dared to stand up." But unless you've got experience recording voices, stick to using text titles to set up your reimagined story.

Be forewarned: turning jubilant comedies like Jack Black's "School of Rock" into horror flicks has been done to death. Try for something original, like the auteur who recast "Willy Wonka and the Chocolate Factory" as the story of an international drug kingpin.

A brief word about “fair use.” When you are playing with copyrighted material, you have to be aware that all your hard work can be for naught. While you may be well within your rights to use a portion of copyrighted material in a parody — the law is murky on how much material and in what fashion constitutes fair use — your parody might get squashed. Downfall’s copyright holder, Constantin Film, had a dozen remixes removed from YouTube earlier this year. But the company seems to have since yielded to the phenomenon. And YouTube recently removed the clip that began the 2007 fad of rickrolling, long after the meme had worn itself out.

These techniques can be used to create parodies of other video memes that come and go, like the keyboard-playing cat or the little boy after a visit to the dentist. (One video replaces the little boy with Darth Vader.) Mashing up two or more clips is easy as all the videos with the Keyboard Cat — so last year — attest to. (The cat, in this meme, was inserted at the end of another video to signal a person’s time in the limelight was over with a vaudeville-style playoff.)

Import each clip into Movie Maker. They’ll appear as a menu of Collections at the top of the window. Drag the parts you want in whatever order into the timeline at the bottom. You can record new audio over them. It’s easy to splice together Hitler having, say, an angry phone call with a talking cat.

Practice mashing movies to get a leg up on the next Internet meme — one that hopefully will not involve cats.

A version of this article appears in print on February 25, 2010, on page B10 of the New York edition with the headline: Video Mad Libs With the Right Software.

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Exhibit 22

The New York Times Magazine

Magazine | THE MEDIUM

The Hitler Meme

By VIRGINIA HEFFERNAN OCT. 24, 2008

On YouTube, we're in a bunker, and the enemies are always, always closing in. The ceilings are low. The air is stifling. A disheveled leader is delusional.

This is the premise of more than 100 videos on the Web — the work of satirists who for years have been snatching video and audio from “Downfall,” the 2004 German movie of Hitler’s demise, and doctoring it to tell a range of stories about personal travails and world politics. By adding new English-language subtitles, they transform the movie’s climactic scene, in which Hitler (played by Bruno Ganz) rails against his enemies and reluctantly faces his defeat, into the generic story of a rabid blowhard brought low.

In the original scene, Hitler is told that his reign of power is over; he then deafens himself to reality, eloquently savages everyone who cost him his dreams, vows revenge and finally resigns himself to private grief. The homemade spoofs plug into this transformation just about any hubristic entity that might come undone: the subtitles speak to the plight of governments, soccer teams, football teams, Hillary Clinton, John McCain, Adam Sandler.

The meme of the parodies — the cultural kernel of them, the part that’s contagious and transmissible — has proved surprisingly hardy, almost unnervingly so. It seems that late-life Hitler can be made to speak for almost anyone in the midst of a crisis.

Fire up YouTube. There you can see the Hitler figure erupt in frustration over his Xbox. He flips out because his friends aren’t going to Burning Man. And, recently, he

loses it because Sarah Palin isn't working out as a running mate. Something in the spectacle of an autocrat falling to pieces evidently has widespread appeal.

When "Downfall" first appeared in German and Austrian theaters, critics charged that it humanized Hitler beyond recognition and sapped the historical horror by turning Hitler and his henchmen into soap-operatic archetypes, transforming their undoing into an ordinary human tragedy.

In fact, the lesson of the parodies seems to be that "Downfall" was a closeted Hitler *comedy*. Having seen the spoofs before seeing the movie, I find it virtually impossible now to watch the film with a straight face. Ganz, the Swiss actor, takes his performance seriously. But something in the character name "Adolf Hitler" also seems to have liberated Ganz to play flat-out melodrama. His goofy, trembling, hopeless rage — in which is wedged a vituperative aria aimed at the traitors he perceives everywhere — recalls nothing so much as Jeremy Piven's raving meltdowns as the jerk agent Ari on the HBO comedy "Entourage."

While Americans might prefer the spoof "Downfall" videos that have American themes, the ones with foreign subjects have somewhat more bite. Last month, a blogger scripted a loyalist to Abdullah Ahmad Badawi, the Malaysian prime minister, in the Hitler role. The loyalist is told that Badawi has turned to martial law and suppression of the press, and he freaks out at the thought that Badawi has gone too far. Like all the "Downfall" parodies, this one is filled with regional jargon, but you don't have to know much about Malaysian party politics to imagine the exasperation of an adviser whose champ keeps making missteps. "Doesn't he know the rakyat are sick of his shenanigans?" read the subtitles, as Ganz raves. "He thinks the I.S.A. will wipe out his problem? Perhaps all that sleep has put too much drool in his brain!" And later, "The whole world will laugh at that idiotic chromedome!"

Interestingly, many of the "Downfall" parodies choose not to have Ganz-as-Hitler directly ventriloquize another politician or figure of derision. Instead, as with the Malaysian parody, the spoofs often make the new speaker a disappointed supporter of a public figure. This move may be an attempt to sidestep the moral issues that should dog any satirist who draws a Hitler mustache on anyone but Hitler himself. Or it's possible that by not making the central character in the

parodies Hitler or anyone like him, the parodists free up their protagonist to be (in good conscience) as funny, raw and sympathetic as he comes across in Ganz's performance.

For those of us who grew up in America with the word "Hitler" having a meaning as fixed as that of a black hole and the epithet "Hitler" being used only by sloppy teenagers and overheated ideologues, this slippery appropriation of Hitler's image for satirical purposes can be hard to take. In a video called "Barack Obama Downfall Satire," Hitler is just Hitler (in the program notes), but he's also a foe of Obama and ultimately someone like Dreyfus in the original "Pink Panther" comedies — a lone debunker who loses his mind trying to bring down a nitwit. The new subtitles are also presumably not written by an American, as the Hitler in this parody dismisses (initially) the participants in an Obama rally as "a gathering for a few student mingers in Che Guevara T-shirts." Mingers?

In any case, like nearly every one of the overwritten Hitlers, this one builds up a rhetorical head of steam. "He's still wearing his Senate diapers!" Hitler shouts. "Hillary Clinton should have been breast-feeding him!" One henchman robotically volunteers that, no, Obama will bring peace and prosperity. That's where I paused. I know that the enemy of Obama in this parody is no less than Hitler himself. But when Hitler gets all the good lines — like Milton's Satan — it seems fair to ask, Is this video for Obama or against him?

Since the advent of online video, people have made remixes and mashups by bolting together spare digital parts and soldering on freshly forged ones. In 2006, the soundtrack, shutter speed and graphic scheme of the "Brokeback Mountain" trailer, for example, were superimposed on old film from "Back to the Future" to create a video that suggested a gay love story between the characters Marty and Doc.

Taken together, the anthology of "Brokeback" spoofs made a larger point about American mythmaking and Hollywood clichés. It turns out you could play make-out music, show slow-mo clips of any two male actors interacting, throw up suggestive title cards ("a truth they couldn't deny") and — presto — any American blockbuster could be shown to chronicle love between two men.

But what's the larger point of the "Downfall" remixes? "Hillary's Downfall," from May, has Ganz in his Hitler garb speak for Hillary Clinton. Desperately denying that Obama will be the Democratic nominee, she says: "These little state primaries are not important. The superdelegates will secure my victory."

That's when Ganz takes off his glasses, his left hand shaking. In the best parodies — and "Hillary's Downfall" is a good one — Ganz embodies the role assigned him by the parodist by the time his glasses come off. This is the moment in the original film after Hitler has been informed that he cannot win; as he eases up on denial, he's coming down on fury. In "Hillary's Downfall," you can't believe how quickly the haircut and costume recede and the Hitler factor fades, eclipsed by Ganz's tough old fork-tongued grandpa performance. Hitler becomes not the author of the Holocaust but a salty dog who, though all is lost, doesn't stop piercing pretense and speaking in slangy, heartfelt language, expressing the most deeply felt needs of the human id. We may have repressed that speak-for-the-people Hitler, the one he decided to be in "Mein Kampf"; but in the form of these videos, he has returned.

Isn't that the outcome that Adolf Hitler, the historical figure, sought? Didn't he see himself as the brute voice of the everyman unconscious?

How grim — how perplexing, how unsettling — that after more than 60 years of trying to cast and recast Hitler to make sense of him, we may have arrived at a version of Hitler that takes him exactly at his word.

Post a Comment at The Medium

Points of Entry

THIS WEEK'S RECOMMENDATIONS

DOWNFALL OF THE UPLOADS: The "Downfall" production company — constantin-film.de — hasn't exactly stood up and cheered to see its film's great bunker scene spoofed all over YouTube. Pursue a link to one, and you're likely to learn, "This video is no longer available due to a copyright claim by Constantin Film

Produktion GmbH.” Copyright claims are serious business, but if you happen to do some creative searching on YouTube itself, you might stumble onto some of the versions that have made their way back to the site.

GANZ MESHUGENEH: Forget Al Pacino in “Scarface” or Jeremy Piven on “Entourage.” **Bruno Ganz** tears it up in “Downfall.” If you watch it as a fiction film and stop worrying that it pretends to comment on history, “Downfall” is memorable camp. The DVD is cheap on Amazon.

SPOOF THE SPOOFS: It had to happen: a meta-take on the Hitler parodies. In the video “**Hitler Is a Meme**,” Hitler learns that he’s an Internet laughingstock. As in, he’s the new “Star Wars” kid or Sarah Palin. He doesn’t take it well. (To a henchman: “I can’t believe I ever friended you!”) Watch at the invaluable [Break.com](#). (This superb parodist, a Web developer in Philadelphia, can be found at [sean-o.com](#).)

A version of this article appears in print on , on page MM20 of the Sunday Magazine with the headline: THE WAY WE LIVE NOW: THE MEDIUM: THE HITLER MEME.

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Exhibit 26

Marywood University Policy & Procedure Information

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EXHIBIT
26

Progressive Discipline Policy Statement

Marywood University endorses a progressive discipline policy designed to promote resolution in a fair and orderly manner. This policy applies to faculty members with tenure or whose terms of appointment have not yet expired. Its objectives support the collegial relationships at Marywood University and are directed toward continual institutional improvement. The primary goal of the progressive discipline policy is to recognize and resolve satisfactorily personal and professional problems that may be rectified through an informal educational process and to forestall their escalation into formal disciplinary action. However, the policy also covers the process governing serious violations of professional responsibilities that may lead to recommendation for suspension or dismissal.

The policy is intended to provide an effective and flexible means of identifying problem areas, resolving complaints, and preventing repetitive incidents by prompt intervention and assistance. It is designed to accomplish these ends by a series of gradual steps involving strategies such as personal conferences, oral and written warnings, and opportunities for monitored assistance where applicable.

Progressive discipline, however, is not guaranteed in every instance. In certain rare and extreme cases, the President has the authority to initiate procedures for suspension or dismissal of a tenured faculty member without that person first undergoing progressive discipline. However, the faculty member retains the right to keep working until the full procedures are completed as outlined below and in the Faculty Grievance Policy.

Definitions

Faculty Grievance Committee: a committee elected by the faculty according to procedures outlined in the Faculty Grievance Policy. Their job is to review faculty grievances, including those that may arise in response to disciplinary action, such as suspension and dismissal. For more information about their selection and procedures, see the Faculty Grievance Policy.

Dismissal: The discharge of a faculty member from employment at Marywood University.

Progressive Discipline: a course of action tailored to each individual circumstance designed for the purpose of resolving a problem or issue with a faculty member through a series of gradual steps.

Suspension: The temporary barring of a faculty member from all work related to the University for a specified period of time. Unless in direct violation of the law, any such suspension will be with pay.

Procedures

Progressive Discipline

1. **Commencement:** Disciplinary action may be initiated by a complaint, oral or written, which alleges violation of institutional policy, practice, procedure or other functions and responsibilities of the faculty member in pursuing his or her customary teaching and institutional role. The complaint, which may reflect an incident or incidents of misconduct or deficiency, may be communicated to the faculty member's immediate supervisor or to the appropriate dean.

2. **Meeting with Administrator:** The administrator receiving the complaint shall discuss the matter with the faculty member in a confidential conference. If additional information from the faculty member provides a satisfactory explanation, the decision may be to close the matter.

However, if additional light is not shed on the allegation or if the explanation proves unsatisfactory, the administrator will specify corrective action to be taken, and the discussion will constitute an oral warning.

3. **Written Warning:** If the alleged problem continues or additional complaints are received, the immediate supervisor or dean must notify the Vice President for Academic Affairs (VPAA), who shall conduct a preliminary investigation concerning the merits of the complaint. A written warning to the faculty member may follow where circumstances indicate that the problem is not resolved. The written warning will become a part of the faculty member's personnel file but will be expunged after three years if no other written warnings have occurred.

Should further written warnings follow, the VPAA may confer with the faculty member's immediate supervisor and dean to discuss alternatives. The VPAA will determine the next course of action, which might result in recommending to the President the faculty member's suspension and/or the termination of the faculty member's employment. Procedures are outlined below.

Special Assistance

1. Give written warning of unacceptable behavior.
2. The VPAA may suggest any of the following remedial actions:
 - counseling and/or another type of treatment program, such as Alcoholics Anonymous or Narcotics Anonymous;
 - psychological counseling and/or treatment, including out-patient treatment prescribed by a duly credentialed and qualified professional;
 - peer faculty monitoring to assist in resolving work-related performance problems;
 - a specified number of periodic conferences with the faculty member's dean to assist in resolving administrative or institutional problems.
3. The VPAA should then monitor the situation for a specified amount of time determined on a case by case basis. Where the assistance necessitates in-patient treatment or time away from teaching, that temporary time-off shall be with pay.

During the period of assistance, the faculty member shall be encouraged to communicate regularly with the VPAA, who shall monitor the faculty member's progress to determine when and if the special assistance has achieved its objective. The faculty member may elect to provide summary statements from treatment providers regarding compliance and prognosis. If the faculty member has refused to participate, or the remedial objective has not been reached during the specified period of time, a recommendation to terminate employment may be made to the President of the University.

Grieving Progressive Discipline

Oral Warnings

Should the faculty member disagree with the oral warnings given by the immediate supervisor, s/he may request to meet with his/her appropriate Dean or, if appropriate, the VPAA to appeal the decision.

Written Warnings/Discipline

Should the faculty member disagree with a written warning or punitive action, s/he may elect to file a grievance with the Faculty Grievance Committee, following the procedures outlined in that policy, and bearing in mind that the Grievance Committee is empowered to review errors in procedure and offer the decision-maker its perspective on the issue, not to substitute its judgment for that of the decision-maker.

Suspension or Dismissal Procedures

Exceptions to Progressive Discipline

In most cases, it is expected that faculty members will be entitled to the processes of progressive discipline. However, in the rare event of an egregious breach of professional discipline or illegal activity, the President may elect to initiate suspension or dismissal procedures immediately. There is no obligation for the President or VPAA to suspend the faculty member before moving to dismissal procedures given severe circumstances. However, whether suspension or dismissal is contemplated, the President will meet with the faculty member to discuss the issue in question, and then, if determined to proceed, will convene the Faculty Grievance Committee to review the case at hand before proceeding according to the procedures outlined below. The faculty member must be allowed to continue to work until the process is complete.

Only in an extreme situation, narrowly limited to the event of a faculty member threatening or causing physical harm to him or herself or members of the campus community, the President or VPAA may opt to suspend the faculty member from his/her assigned duties immediately. Unless in direct violation of the law, any such suspension should be with pay. The President should then initiate formal procedures as outlined.

Suspension

Should progressive discipline or special assistance result in no change in the faculty member's actions, the VPAA may opt to recommend to the President the suspension of the faculty member for a specified period of time. Alternately, in rare circumstances of an egregious breach of professional discipline or illegal activity, the President may elect to consider the suspension or dismissal of a faculty member for a specified period.

If the need for suspension is determined, the President will meet with the faculty member to discuss the issue at hand. If, after that meeting, the President resolves to continue with suspension, s/he should send a written communication to the faculty member, stating with reasonable particularity the basis for suspension and offering, if requested by the faculty member within 7 (seven) days, to convene the Faculty Grievance Committee to consider the matter, to render confidential advice, and thereby to effect a remedy if possible.

If the faculty member elects not to convene the Faculty Grievance Committee within 7 (seven) days, the suspension shall stand. If s/he elects to convene the committee, the faculty member will continue to perform usual assigned duties (unless such continuation would lead to

in a public place. The University will not publish the committee's findings until the committee's findings have been published. Unless in direct violation of the law, any such suspension should be with pay.

Dismissal

Should progressive discipline or special assistance result in no change in the faculty member's actions, the VPAA may opt to recommend to the President the termination of the faculty member's employment.

Before moving to termination, the President must meet with the faculty member to see if any possible remediation might occur or to see if the faculty member can provide any mitigating circumstances that might justify a less drastic course of action.

If the need for dismissal is determined, the President will send a written communication to the faculty member, stating with reasonable particularity the basis for dismissal and stating that the matter has been referred to the Faculty Grievance Committee to consider the matter, to render confidential advice, and thereby to effect a remedy if possible. The Faculty Grievance Committee Chair will immediately contact the faculty member as per the procedures outlined in the Faculty Grievance Policy.

Upon such notice, the faculty member may elect not to continue the Faculty Grievance Committee's hearing; if so, s/he should so notify the Faculty Grievance Committee and the President in writing and the dismissal shall stand.

While awaiting the Committee's findings, the faculty member will continue to perform usual assigned duties (unless such continuation would lead to immediate physical harm to the faculty member or other members of the university community).

The Faculty Grievance Committee shall follow its procedures as outlined in the Faculty Grievance Policy. Once the Committee has made its findings, the Chair will send in writing the Committee's opinion to the President of the University, copied to the faculty member and the VPAA.

If the Committee's decision is that there is no merit to the complaint against the faculty member, they shall recommend discontinuing the proceedings for suspension or dismissal. If the Committee finds that reason exists to question the fitness of the faculty member, they shall recommend either to continue the suspension or dismissal proceedings.

If the President agrees with the Committee's findings, she will notify in writing the Board of Trustees and the faculty member of the findings and her decision to accept. If the President chooses to reject the Committee's findings, she will provide the Committee and the faculty member a detailed rationale in writing for her decision.

The Committee's recommendation should be taken very seriously by the President, especially in the case of a unanimous vote and clearly, logically written findings. In that case, the administration should consider very carefully the possible repercussions of rejecting the faculty Committee's findings. If the Committee were split in its vote, with both sides making compelling arguments, the President would be more justified in choosing to reject the recommendation.

Note: the Faculty Grievance Committee will only be convened twice (i.e., once for suspension and once for dismissal) in the event that progressive discipline procedures have been instituted and failed, and that a reasonable amount of time has taken place between suspension and dismissal. In this event, the membership of the Committee may be similar or different, a determination of which is made by the Faculty Grievance Committee Chair, after consultation with the Faculty Senate Executive Council. In the rarer event of a serious breach of professional discipline and/or illegal activity, if the President elects to proceed immediately with dismissal procedures (not suspension) after meeting with the faculty member, then the Faculty Grievance Committee will meet only once to appeal the dismissal.

Publicity

Public statements by the faculty member or others about possible or actual termination of employment should be avoided.

Responsibility for Expenses Incurred in Grievance and Appeal

Expenses incurred by the grievant are the responsibility of the individual. These include, but are not limited to, the following:

- Cost of an advisor.
- Travel expenses for advisor, witnesses, or others engaged by petitioner.
- Cost of preparing any documents and copies thereof.

Non-Retaliation

Grievants will not be adversely affected for exercising their right to file a grievance, regardless of outcome. Similarly, neither committee members nor witnesses will suffer adverse effects as a result of their participation in the process. Anyone who violates this mandate can be subject to disciplinary action, up to and including dismissal.

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- [Faculty Status](#)
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Related Committees

History

- 07/01/89 - Reaffirmed with publication of Faculty Manual
- 12/12/97 - Addition of informal process approved by the President of the University as recommended by the Policy Committee of the University
- 07/01/03 - Editorial changes made to reflect academic restructuring
- 10/12/11 - Revision approved by the President of the University as recommended by the Policy Committee of the University
- 05/07/14 - Revision approved by the President of the University as recommended by the Policy Committee of the University

Secretary of the University & General Counsel | 108 [Immaculata Hall](#)
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Exhibit 27

EXHIBIT
27

LAW OFFICES of
DAVID G. CONCANNON, LLC

FACSIMILE COVER SHEET

TO: President Anne Munley (570) 340-6014
FROM: Jonathan Z. Cohen, Esquire (610) 293-8086
DATE: February 2, 2012
RE: Employment status of Dr. Frederick F. Fagal, Jr.
PAGES: 5

~~~~~  
Comments:

Please see the attached letter. Thank you.

*The information contained in this transmission is intended solely for the addressee(s) named above and may contain confidential or privileged information. If you are not an addressee or responsible for delivering this transmission to an addressee, then you are strictly prohibited from reading or disclosing it; please notify the sender immediately.*

LAW OFFICES of  
**DAVID G. CONCANNON, LLC**

February 2, 2012

Via E-Mail, Facsimile & FedEx

President Anne Munley, Ph.D., IHM  
Marywood University  
2300 Adams Avenue  
Scranton, Pennsylvania 18509

**Re:** Employment status of Dr. Frederick F. Fagal, Jr.

Dear President Munley:

I am legal counsel to Dr. Frederick F. Fagal, Jr. The purpose of this letter is to: (1) remind you of Dr. Fagal's contractual relationship to Marywood University; (2) respond to your suspension of Dr. Fagal on January 23rd, 2012; (3) respond to your letter dated January 24th, 2012 informing Dr. Fagal of your recommendation to terminate his tenure and employment; and (4) inform you of the legal consequences of punishing Dr. Fagal further.

**1. The legal relationship between Dr. Fagal and Marywood**

Marywood University and Dr. Fagal are parties to a contract. The Letter of Agreement that you signed on May 10th, 2011 "serves as a binding contract . . . and as a vehicle to renew, adjust and/or alter the terms of [Dr. Fagal's] original contract regarding appointment, rank, tenure, salary, benefits, etc." Policies and Procedures Manual – Marywood University, <http://www.marywood.edu/policy> ("PPM"). Dr. Fagal's original contract incorporates the policies and procedures of Marywood's Faculty Handbook.

Changes to Marywood's Faculty Handbook "are effective with formal approval and placement in the *Marywood University Policies and Procedures Manual*." Marywood University Faculty Handbook, Introduction (July 1, 2010). Marywood's policies are "binding on members of the University community" and they become operational with your personal approval. See PPM.

**2. Your suspension of Dr. Fagal was a breach of policy and contract.**

Marywood's Policies and Procedures Manual contains a section called "Progressive Discipline," which is obviously relevant to this matter despite your failure to cite it. Under that policy, suspension "is justified if immediate harm to the faculty member or others is threatened

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by the person's continuance in the faculty position." The decision to suspend is left to the Vice President for Academic Affairs (Dr. Alan M. Levine)—not you.

Dr. Fagal is not aware of any allegation by a Marywood official that his presence on campus threatens "immediate harm" to any individual. Nor could such hypothetical allegations be taken seriously under the circumstances: Dr. Levine has not required that Dr. Fagal participate in counseling or any other type of treatment pursuant to the Progressive Discipline policy; Dr. Fagal has not been barred from campus to his knowledge; and he is not aware of any report to law enforcement authorities regarding any "immediate harm."

Your suspension of Dr. Fagal is not justified under Marywood policy and is therefore a breach of contract. Marywood's Progressive Discipline policy states that "[f]aculty members have the right to convene an ad hoc committee in order to appeal either a decision to suspend the faculty member or a decision to dismiss the faculty member." PPM. Dr. Fagal hereby elects to convene an ad hoc committee to appeal his suspension.

**3. Your January 24th letter to Dr. Fagal was another breach of policy and contract.**

In your letter dated January 24, you informed Dr. Fagal of your recommendation to terminate his tenure and employment immediately. Marywood's Progressive Discipline policy, which you personally revisited and approved on October 12, 2011, contains one sentence specifically addressing dismissal:

If remedial actions(s) taken during the suspension does not sufficiently resolve the issues that lead to the suspension, the university may move towards dismissal of the faculty member.

PPM. Dr. Fagal is not aware of any "remedial actions" taken by Marywood to "resolve the issues" that led to his suspension. As you know, Dr. Fagal's suspension began on the morning of January 23; your letter regarding termination arrived in his inbox at 1:11 PM on the next day.

Your move toward dismissal of Dr. Fagal was another clear breach of Marywood policy and contract. The letter should be rescinded immediately. In the meantime, Dr. Fagal hereby elects to convene a separate ad hoc committee pursuant to Marywood's Progressive Discipline policy. See PPM.

**4. Legal consequences of proceeding further.**

Assuming that your letter was a proper step toward Dr. Fagal's dismissal—and it surely was not—the idea that you would recommend termination under these circumstances is troubling. The first three sentences of Marywood's Tenure policy read as follows:

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Tenure is a term designating permanent and continuous appointment for a full-time faculty member. It implies a mutual commitment on the part of the faculty member and the University and cannot be taken lightly. Once tenure is granted, it will be discontinued only for grave reason, which may include moral turpitude, flagrant abuse of academic freedom, or professional incompetence.

PPM (emphasis added). Dr. Fagal is not aware of any allegations of "moral turpitude," "flagrant abuse of academic freedom," "professional incompetence," or other form of "grave" misconduct directed against him. Moreover, the videos that he posted on YouTube are satirical exercises. While we accept at face value that you were offended by Dr. Fagal's videos, you are not the Universal Arbiter of the line between offensive and humorous expression. No "grave reason" has arisen to terminate Dr. Fagal's tenure. I am confident that a committee of tenured Marywood faculty or a federal jury, if necessary, will agree.

Your letter concludes with an incomplete "Statement of Charges" relating to your recommendation to terminate Dr. Fagal but sidestepping the issue of his suspension entirely. The end of the second charge is literally missing; no reader could know the full substance of the charges or even the number of charges against Dr. Fagal, let alone defend against the charges. The remaining charges lack the "reasonable particularity" required by Marywood's Progressive Discipline policy, see PPM, and are otherwise fundamentally flawed for the following reasons:

- *"Violation of Tenure Policy."* Only the first four sentences of this policy pertain to the circumstances in which a tenured faculty member may lose his or her tenure. The remainder of the policy, including the text quoted in your letter, addresses the policies and criteria by which a faculty member may attain tenure.
- *"Violation of Civil Rights Policy."* Again, part of this charge is missing. In any case, Dr. Fagal has not received any complaint pursuant to Marywood's Civil Rights Complaint Procedures. See PPM. Those procedures "must be followed any time a member of the Marywood University community believes s/he has been the victim of...discrimination, harassment, or assault by any member of the University community...." PPM.
- *"Violation of Professional Ethics Policy."* Allegations of discrimination or harassment must be handled pursuant to Marywood's Civil Rights Complaint Procedures, as mentioned above. See PPM.
- *"Violation of the University's Mission and Values as well as the principles of collegiality."* This charge is far too vague to be of any use. To the extent that you are alleging that Dr. Fagal has not been sufficiently collegial, this charge is simply an end-run around Marywood's Civil Rights Complaint Procedures. See PPM.

LAW OFFICES of  
**DAVID G. CONCANNON, LLC**


Next, your letter presents Dr. Fagal with two concocted choices: You ask Dr. Fagal to indicate whether he grants permission for Marywood "to release Sister Anne Munley's Recommendation for Termination and Statement of Charges dated 1/24/12" to a faculty committee. The alternative choice, refusing such permission, requires Dr. Fagal to acknowledge "that there will be no faculty committee review of Sister Anne Munley's decision to terminate [his] tenure and employment with the University prior to it being finalized." In other words, you invite Dr. Fagal to ratify a recommendation for termination and a "Statement of Charges" that breach multiple contractual obligations by Marywood *or* ratify a termination decision by you alone that likewise breaches multiple contractual obligations by Marywood. My client will not waive either breach.

As stated above, Dr. Fagal elects to convene two separate ad hoc committees pursuant to Marywood's Progressive Discipline policy: one for your decision to suspend him and the other for your recommendation to terminate him. Dr. Fagal makes these elections pursuant to Marywood's Progressive Discipline policy. See PPM. Please confirm that I will be permitted to represent Dr. Fagal at any such hearings.

In the event that you proceed solely with your recommendation to terminate Dr. Fagal, then I request that you at least send me an amended, more detailed "Statement of Charges" rectifying all of the problems that I have described above.

If you have any questions about this matter, please do not hesitate to contact me.

Sincerely,



Jonathan Z. Cohen, Esquire



# Exhibit 28



Jackson Lewis LLP  
90 State House Square  
8th Floor  
Hartford, Connecticut 06103  
Tel 860 522-0404  
Fax 860 247-1330  
www.jacksonlewis.com

|                 |                  |                   |                       |
|-----------------|------------------|-------------------|-----------------------|
| ALBANY, NY      | DETROIT, MI      | MILWAUKEE, WI     | PORTLAND, OR          |
| ALBUQUERQUE, NM | GREENVILLE, SC   | MINNEAPOLIS, MN   | PORTSMOUTH, NH        |
| ATLANTA, GA     | HARTFORD, CT     | MORRISTOWN, NJ    | PROVIDENCE, RI        |
| BALTIMORE, MD   | HOUSTON, TX      | NEW ORLEANS, LA   | RALEIGH-DURHAM, NC    |
| BIRMINGHAM, AL  | INDIANAPOLIS, IN | NEW YORK, NY      | RICHMOND, VA          |
| BOSTON, MA      | JACKSONVILLE, FL | NORFOLK, VA       | SACRAMENTO, CA        |
| CHICAGO, IL     | LAS VEGAS, NV    | OMAHA, NE         | SAN DIEGO, CA         |
| CINCINNATI, OH  | LONG ISLAND, NY  | ORANGE COUNTY, CA | SAN FRANCISCO, CA     |
| CLEVELAND, OH   | LOS ANGELES, CA  | ORLANDO, FL       | SEATTLE, WA           |
| DALLAS, TX      | MEMPHIS, TN      | PHILADELPHIA, PA  | STAMFORD, CT          |
| DENVER, CO      | MIAMI, FL        | PHOENIX, AZ       | WASHINGTON, DC REGION |
|                 |                  | PITTSBURGH, PA    | WHITE PLAINS, NY      |

MY EMAIL ADDRESS IS: ANTHONYW@JACKSONLEWIS.COM

|                                        |
|----------------------------------------|
| <p><b>EXHIBIT</b></p> <p><b>28</b></p> |
|----------------------------------------|

February 9, 2012

**VIA ADVANCE EMAIL**

Jonathan Z. Cohen, Esquire  
Law Offices of David G. Concannon, LLC  
200 Eagle Road, Suite 116  
Wayne, PA 19087

Re: Marywood University

Dear Attorney Cohen:

We reviewed your February 2, 2012 letter and write in response to same. As explained more fully below: 1) Dr. Frederick F. Fagal breached his contract with Marywood University resulting in Sister Anne Munley's recommendation which she forwarded to him on January 23, 2012; 2) as a result of his first breach, he is not entitled to pick and choose which policies and procedures he believes will suit him best; and 3) his reprehensible conduct in depicting Marywood's President as Adolf Hitler and disseminating it to members of the Marywood community led to the University's action against Dr. Fagal, which it intends to stand by and defend should the need arise.

**Dr. Fagal Breached His Contract With Marywood**

By entering into his contract with Marywood, Dr. Fagal agreed to the following which is outlined in Marywood's tenure policy:

The commitment of a faculty member who requests tenure is as deep and binding on the faculty member as it is on the University. Just as the conferring of tenure by the University recognizes the competence of an individual faculty member, submission to the University of an application for tenure suggests a strong acceptance by that individual of the mission, goals and objectives of the University. The request represents a commitment to work jointly with faculty, students, administrators and staff for the growth and welfare of the University. It is a commitment to devote one's energies to continued personal development and continued high levels of achievement as a member of the Marywood academic community.



As you apparently are not familiar with Marywood's mission, goals and objectives, we have attached them to this letter for your review. As you will see, disseminating a message and video to the Marywood Community which uses vulgar language, depicts the University's leaders as Nazis and belittles its leaders through personal insults have no place at Marywood University. More importantly, this conduct breaches a material term of Dr. Fagal's commitment to the University as a tenured faculty member.

As a result of Dr. Fagal's breach of contract, Marywood had no further contractual obligations to him. See, e.g., Sylvester v. Southwestern Energy Prod. Co., 2009 U.S. Dist. LEXIS 101788, at \*5 (M.D. Pa. 2009) (a material breach of contract by one party discharges the other party's duties); Triad Retail Partners v. Diemer, 1989 U.S. Dist. LEXIS 2406, at \*9 (E.D. Pa. 1989) (the first material breach discharges the other party's remaining obligations under the contract); Widmer Engineering, Inc. v. Dufalla, 2003 PA Super 391, 837 A.2d 459, 467 (Pa. Super. 2003) (noting "settled principle of contract law: a material breach by one party to a contract entitles the non-breaching party to suspend performance").

#### **Marywood's President Acted Properly in Suspending Dr. Fagal and Recommending Termination**

Contrary to your assertion, Marywood's President determined that Dr. Fagal's attempt to use the Nazi regime and all it stands for was extremely disturbing and demonstrated a depraved indifference to moral behavior consistent with Marywood University and the fundamental values upon which it and the Catholic church are founded. Whether you choose to view your client's actions as "satirical", comical or appropriate is of no significance to Marywood. Neither you nor your client has the responsibility for preserving Marywood's mission, values and healthy environment. See Murphy v. Duquesne University of the Holy Ghost, 777 A.2d 418 (Pa. 2001) (finding that the university did not breach the terms of the faculty handbook when it terminated a tenured professor of law for "serious misconduct" after it determined he had violated its sexual harassment policy). Moreover, a tenured professor has no breach of contract claim against a university for allegedly making a wrong decision when it terminated his employment. See Murphy, 777 A.2d at 433 ("while [a professor] is free to assert in a court of law that the process of forfeiture that was afforded him did not comply with the contract terms, he is not free to demand that a jury re-consider and re-decide the merits of his termination"); Baker v. Lafayette College, 516 Pa. 291, 532 A.2d 399, 403 (Pa. 1987) ("This Court has no jurisdiction to review the factual determinations of a college's governing body unless it can be clearly demonstrated that that body violated its own procedures."); Robertson v. Drexel Univ., 2010 PA Super 22, 991 A.2d 315, 320 (Pa. Super. 2010) (private parties, including religious and educational institutions, may draft employment contracts which restrict review of professional employees' qualifications to an internal process that, if conducted in good faith, is final within the institution and precludes or prohibits review in a court of law); Shepard v. Temple Univ., 2008 PA Super 93 (Pa. Super. 2008) (where assistant professor claimed that the denial of her application for tenure constituted a breach of her employment contract with the university, the court concluded that the decision regarding the assistant professor's tenure was not a proper judicial function since the evaluation of her suitability to the university's educational needs, goals, and philosophies necessarily involved many subjective, nonquantifiable factors, which were best performed by the university and not judges). Accordingly, your client has neither a claim for breach of contract nor a claim that will result in a second-guessing of Marywood's decision.

February 9, 2012

Page 3



**Dr. Fagal Waived His Right to a Review of the President's Recommendation**

You appear to have advised your client to waive his right to have a review of Sister Anne Munley's recommendation prior to her finalizing it. That certainly is your client's prerogative to do so, but Marywood will provide that opportunity one last time. Enclosed is a revised Statement of Charges which you requested. While Marywood does not believe this revised statement is necessary, in the spirit of cooperation, it will provide it as requested. Marywood will forward it to your client as well.

Should your client choose to seek a review of the President's recommendation, you will not be a part of the process other than as an outside advisor to your client. It is a closed process and will remain that way.

Finally, rest assured that Marywood University intends to vigorously defend itself against this significant assault on its Mission, Core Values and guiding principles.

Should you have any questions, please contact me.

Very truly yours,  
JACKSON LEWIS LLP

A handwritten signature in blue ink, appearing to read "William J. Anthony".

William J. Anthony

WJA/amj

cc: Stephanie Peet, Esq.



**Marywood**  
UNIVERSITY

OFFICE OF THE PRESIDENT

MARYWOOD UNIVERSITY  
SCRANTON, PA 18509-1598  
TEL: (570) 348-6231  
FAX: (570) 340-6014  
ANNEMUNLEY@MARYWOOD.EDU  
WWW.MARYWOOD.EDU

February 8, 2012

Dr. Frederick Fagal  
17 East Lake Street  
Skaneateles NY 13152

Sent via email ([fffagal@yahoo.com](mailto:fffagal@yahoo.com)), certified mail, regular mail

Re: Recommendation for Termination

Dear Dr. Fagal:

Pursuant to your attorney's request, the following is a revised statement of charges. As a result of your breach of a material term of your obligations as a tenured professor, I am recommending that your tenure and employment with Marywood be terminated immediately. The University will, however, pay you the remainder of your 2011-12 Agreement and keep you on benefits through August, 2012. This recommendation comes after much consideration of and reflection on your actions which I find to be highly offensive and directly contrary to Marywood's Mission and Values, your tenure agreement and your obligation as an employee of this University to conduct yourself in accordance with our policies and values.

As you know, our values include, among others:

- A commitment to spiritual, ethical and intellectual values in the context of a faith community.
- Respect for the value of each human being, for diversity in the context of vibrant community, and for the earth and all creation.

After reviewing the subtitles you authored and transposed onto a film depicting Adolf Hitler and the Nazi regime, I find that you deliberately and maliciously violated our principles and your commitment to this University by: 1) depicting Executive Officers and me in an offensive and hostile light, including making highly inappropriate comments about family members of these individuals; 2) using sexually explicit, offensive and insulting language; and 3) portraying an image of Marywood in a manner that was an affront to the University community as a whole. As a result, I am recommending that your tenure and employment be terminated and provide you the following Statement of Charges:

**1. Breach of Tenure Agreement**

Marywood's tenure policy provides in relevant part:

It implies a mutual commitment on the part of the faculty member and the University and cannot be taken lightly...Once tenure is granted, it will be discontinued only for grave reason, which may include moral turpitude, flagrant abuse of academic freedom, or professional incompetence...The commitment of a faculty member who requests tenure is as deep and binding on the faculty member as it is on the University. Just as

*An education inspired by the Sisters, Servants of the Immaculate Heart of Mary.*

the conferring of tenure by the University recognizes the competence of an individual faculty member, submission to the University of an application for tenure suggests a strong acceptance by that individual of the mission, goals and objectives of the University. The request represents a commitment to work jointly with faculty, students, administrators and staff for the growth and welfare of the University.

(Emphasis added).

Your decision to author and disseminate the above described video is a breach of your commitment to Marywood and is in direct contravention of the letter and spirit of Marywood's Mission, Core Values and Objectives. To be clear, however, enclosed is a copy of Marywood's Mission, Core Values and Objectives. Depicting the University's President as Adolf Hitler, a man who is responsible for torturing and killing in excess of 6 million people simply because they are Jewish is an intentional, malicious and blatant violation of your tenure commitments. Portraying other University officials as Nazi leaders, using crude and vulgar language and belittling University officials also violates your agreement with Marywood. You gravely injured our community by your actions.

## **2. Violation of Civil Rights Policy**

Marywood's Civil Rights Policy provides in relevant part:

Marywood University does not condone and will not tolerate discrimination, harassment, or assault by any member of the Marywood community upon another individual, regardless of whether the action is based on race, sex, color, national or ethnic origin, age, creed, ancestry, religion, disability, or any other legally protected status.

In your video, not only do you attempt to make light of the Nazi regime, which evokes deep personal reminders of the extreme hate of members of the Jewish faith, but you also demean and belittle Dr. Levine and his family and launch other personal attacks on executive officers. Harassment of this type directly violates our Civil Rights Policy and will not be tolerated.

## **3. Violation of Marywood's Conditions of Computer Use Policy**

Marywood's Conditions of Computer Use policy provides in relevant part:

Users of Marywood University computing facilities and services are held to high ethical standards. These conditions of use are based on the "spiritual, ethical and religious values and a tradition of service" expressed in the Mission Statement of the University. They underscore responsible, ethical, legal, and secure use of the campus-wide information system, and they derive from standards of common sense and common decency that apply to any shared resource. Responsibility extends to access, use of information, and distribution of data.

Marywood University administrators, faculty members, staff, and students may use the computers in all public computing facilities for research work and classroom assignments...

Access to the Marywood computer system is not a right, but a privilege. When individuals log on to the University's computer system, they become responsible for adhering to University policy and state and federal laws governing individual privacy rights and confidentiality. The following list is not all-inclusive: [and includes the following:

- They honor the intellectual rights of others by avoiding copyright infringement. This includes all Marywood University-owned computers, i.e., computers purchased with University funds.
- They do not make or use unauthorized copies of copyrighted or licensed programs or data. They only use authorized copies in full accord with the license agreement and national and international laws.
- They respect the civil rights of others to an open and hospitable environment, regardless of race, sex, color, national or ethnic origin, age, creed, ancestry, religion, disability, or any other legally protected status, and with respect to sexual harassment including e-mailing inappropriate messages.

Clearly you used Marywood's system by emailing to members of its community the above described video using their Marywood email accounts. In doing so, it appears that you used violated copyright laws associated with the use of a copyrighted video, although you are free to prove to us that you obtained permission from the owners of that copyright to publish the video. Even if you did obtain the requisite permission, you failed to respect the civil rights of others by your conduct. I believe I have sufficiently described this conduct above.

**4. Violation of Academic Freedom Policy; Professional Ethics Policy and University's Mission and Values as well as the principles of collegiality.**

I have attached a copy of your 2011-12 Letter of Agreement and the above policies so that you have them. They can also be found on our website. As an initial matter, your video is not in furtherance of any scholarly pursuit and was clearly not intended to be part of an academic exercise. Nevertheless, even if it were, our policy provides that academic freedom "presupposes, first of all, personal integrity in dealing with students, peers and officers of the University. Second, it presumes scholarly competence, observance of the professional standards of one's discipline, commitment to the stated mission of the University..." As detailed above, your email and video is devoid of personal integrity, has no scholarly competence and is in total disregard of the stated mission of the University.

I hope you will take the time to read the Professional Ethics Policy. In it you will find that you had a "special responsibility," "obligations" to the Marywood community and the obligation to not discriminate or harass your colleagues. Once again, you violated these policies and instead chose to invoke images of hatred and to ridicule your colleagues. Further, as set forth in detail above, you violated Marywood's Mission and Values which are at the core of what this University and all for which this community stands.

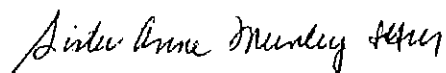
As a result of this recommendation, I am prepared to send this statement of charges to a duly appointed faculty committee for review along with the emails and videos you forwarded to members of our community. In order to do so and out of respect for your privacy, I would ask that you please sign and return to me the attached authorization granting the University permission to do so. That faculty

committee may agree or disagree with my recommendation. Once I receive the review committee's determination, I will finalize my decision. Should you choose to forego that faculty review, I will finalize my recommendation based upon my own findings and conclusions.

Please respond no later than Friday, February 17, 2012.

If you have any questions regarding this matter, you may direct them to me or to Dr. Dunleavy.

Very truly yours,

A handwritten signature in cursive script, reading "Sister Anne Munley, IHM".

Sister Anne Munley, IHM  
President

Enclosures:

2011-12 Letter of Agreement

Tenure Policy

Civil Rights Policy

Conditions of Computer Use Policy

Academic Freedom Policy

Professional Ethics Policy

Marywood University Mission and Core Values

Release of Personal Information Authorization Form





# Marywood

UNIVERSITY

Tenured Faculty  
Letter of Agreement  
2011-2012 Academic Year

May 10, 2011

Dr. Frederick F. Fagal, Jr.  
17 East Lake Street  
Skaneateles, NY 13152

Dear Dr. Fagal, Jr.,

This Letter of Agreement is offered to you for the 2011-2012 Academic Year. In accord with the agreed upon Salary Plan, your salary reflects a 2.5% annual increase of \$1,858.00.

Other terms of this agreement are as follows:

|                      |                             |
|----------------------|-----------------------------|
| Term:                | 8/22/2011 to 5/18/2012      |
| Type of Appointment: | Full-Time (9 months) Tenure |
| Rank:                | Associate Professor         |
| College:             | Liberal Arts & Sciences     |
| Department:          | Social Science              |
| Responsible to:      | Department Chairperson      |
| Salary:              | \$76,196.00                 |

Faculty members must apply for benefits other than Social Security and Worker's Compensation through the Human Resources Department. Full-time faculty benefits include health, dental, long-term disability, group life, and accidental death and dismemberment under the Flexible Benefits Plan. Elections are made by June 1 of each year for the subsequent fiscal year beginning July 1. Retirement contributions by the University vary based on the contribution level selected by the faculty member. The appropriate government forms, including Form W-4 and I-9, must be completed and on file in the Human Resources Department.

This agreement is valid for one month from the date of this letter. The original copy of this Letter of Agreement must be signed and returned to my office by June 10, 2011. If you do not return the original signed copy by June 10, it will be assumed that you are not returning to Marywood. On behalf of the Board of Trustees and myself, I express our gratitude for your dedicated service and commitment to Marywood University. May God continue to bless you.

Sincerely,

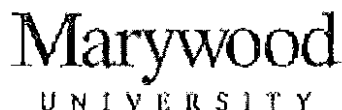
*Anne Munley*

Anne Munley, IHM, Ph.D.  
President

Agreed this 25 day of May, 2011

Signature

*Frederick F. Fagal, Jr.*



## Policies and Procedures Manual: Tenure

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### Policy Statement

Tenure is a term designating permanent and continuous appointment for a full-time faculty member. It implies a mutual commitment on the part of the faculty member and the University and cannot be taken lightly.

Once tenure is granted, it will be discontinued only for grave reason, which may include moral turpitude, flagrant abuse of academic freedom, or professional incompetence. In addition, as expressed in its *Retrenchment of Faculty* policy, the University may be required to discontinue tenure because of severe financial exigencies or reorganization of the department and/or curriculum resulting in lack of need.

The commitment of a faculty member who requests tenure is as deep and binding on the faculty member as it is on the University. Just as the conferring of tenure by the University recognizes the competence of an individual faculty member, submission to the University of an application for tenure suggests a strong acceptance by that individual of the mission, goals and objectives of the University. The request represents a commitment to work jointly with faculty, students, administrators and staff for the growth and welfare of the University. It is a commitment to devote one's energies to continued personal development and continued high levels of achievement as a member of the Marywood academic community. It is an assertion of career goals; it is expected that a faculty member will not lightly withdraw from this relationship.

The probationary period shall not exceed seven years of full-time teaching/librarianship at Marywood, with application for tenure being made in the sixth year. Successful candidates receive a tenure contract for the seventh year; unsuccessful candidates receive a one-year terminal contract for the seventh year. Faculty members on leave during the probationary period must follow the University's policy on leaves. Interrupted service at Marywood University and also prior service at another regionally accredited, four-year college or university may be credited toward the fulfillment of the probationary period. Such credit will be determined by the Vice President for Academic Affairs.

Tenure occurs by action of the President of the University.

### Definitions

This revised *Tenure* policy is effective January 1, 2012. Faculty members whose date of hire as full time is before January 1, 2012, may choose the policy in effect prior to that date if they wish.

### Procedures

#### *Procedures for Tenure Consideration*

A candidate for tenure must submit a *Notification of Application for Tenure* form and submit relevant data and documentation in the sixth year of the probationary period, according to the deadline dates noted below. The candidate for tenure is encouraged to meet with the dean and chairperson during the summer prior to submission to discuss the application. The intent of this review is to afford the dean and chairperson the opportunity to offer the candidate informal guidance that will help the candidate to make the strongest case possible for tenure. The candidate is also encouraged to meet with the tenured members of the department one year before submission of the application to identify areas of strength and weakness in meeting the tenure criteria. In applying these tenure procedures for faculty librarians, the Director of Library Services acts in place of both dean and department head. If the candidate decides to withdraw the application, he/she must do so by October 17 or February 21.

(A faculty member who is hired to begin work at Marywood in the spring semester submits a tenure application in the spring of his/her sixth year. For the spring semester dates of submission of the application, refer to the procedures in the *Promotion of Faculty Members* policy.)

If a due date below falls on a weekend or a holiday, the due date becomes the next business day.

1. By September 1 or January 3, the faculty member initiates the process by submitting the *Notification of Application for Tenure* form to the Chair of the Rank and Tenure Committee. The Chair will be responsible for providing a list of candidates who are applying for tenure to the Vice President for Academic Affairs, the appropriate dean(s), and the head of the applicant's academic department.
2. By September 21 or January 21, the applicant submits paper copies of the *Application for Tenure* form, together with an up-to-date curriculum vitae and a narrative not to exceed an equivalent of 100 printed pages in 12-point font to the head of the applicant's department. (If the applicant is the department head, the senior member of the department functions as the department head during these procedures.) The candidate may submit supplementary materials in the form of appendices. The application must be structured based on how the tenure criteria section of the handbook is organized. The document must be numbered sequentially, include definitions of terms related to one's discipline, and carefully proofread. All annual evaluations of the candidate written by the appropriate dean and the department head must be included in the application materials. The Vice President's report to the candidate on the results of his/her 3 year pre-tenure review must be included.
3. The department head notifies the department's full-time, tenured and tenure-track faculty members that the application is available for their review. The Chair of the Rank and Tenure Committee notifies the tenured members of the applicant's department of their responsibility to complete the *Confidential Colleague Evaluation Form*. Each tenured faculty member is to submit the *Confidential Colleague Evaluation Form* to the Chair of the Rank and Tenure Committee by September 28 or January 28.

If a candidate for tenure is the chair of a department, the most senior tenured member of the department acts as chair during the tenure process. If no senior tenured faculty member is available, the Rank and Tenure Committee, in consultation with the appropriate dean and the candidate, chooses a senior tenured faculty member from another department to act as chair.

Once an untenured faculty member submits a pre-tenure file to the Rank and Tenure Committee, he/she completes by September 28 or January 28 the *Confidential Colleague Evaluation* form for tenure applications that originate in his/her department.

4. By October 7 or February 7, the department head submits to the dean of the appropriate college all application materials and a recommendation letter that is based on a thorough review of the

- application documents. By this date, the department head also submits to the applicant a copy of the same recommendation letter.
5. By October 17 or February 21, the appropriate dean or the Director of Library Services reviews the evaluation of the department head when applicable and submits to the Chair of the Rank and Tenure Committee a recommendation letter and all application materials. The recommendation letter is to be based on a thorough review of the application materials.
  6. The Rank and Tenure Committee evaluates the application and submits its recommendation, vote, and materials upon which the recommendation was based to the Vice President for Academic Affairs.
  7. Having received all materials by November 21 or March 20, the Vice President for Academic Affairs evaluates the application with its accompanying documents, and submits a recommendation with the materials on which it is based to the President of the University. This includes the Rank and Tenure Committee's recommendation and vote, all other recommendations, and all application and evaluative documentation.
  8. Having received the documents by January 10 or April 15, the President of the University reviews them and renders a final decision. The President or the Vice President for Academic Affairs informs the faculty member of the status of the application, including the recommendations of all reviewing bodies. In the case of a negative decision, the criteria not met are communicated to the applicant.

All materials submitted by the applicant will be returned at the conclusion of the process.

### *Criteria*

The candidate for tenure must:

1. have completed all formal educational requirements in the relevant academic field, judged necessary to meet the needs of the department and the University;
2. have achieved at least the rank of Associate Professor or, if currently an Assistant Professor, must apply for promotion to Associate Professor and Tenure at the same time and may do so with the submission of a single document using the tenure criteria;
3. have evidenced an expertise needed by one's department or a related department, which may include developing new courses and teaching a diversity of courses as needed, or in the case of faculty librarians by developing new library services and initiatives;
4. have demonstrated consistently effective teaching/librarianship ability as attested to by the evaluation procedures of the University;
5. have provided service to students extending beyond the teaching/librarianship function to student advisement and direction;
6. have evidenced accomplishment and promise in research, scholarship, publication, and/or creative achievement;
7. have evidenced membership and involvement in the activities of professional societies;
8. have demonstrated significant involvement in community service related to the mission, goals or core values of the University, and the University community's academic, cultural, administrative, and student affairs.

### *Procedures for Pre-Tenure Review*

A pre-tenure review system evaluates the first three years of each tenure-track faculty member's

progress toward tenure.

The candidate submits pre-tenure review materials in the fall of his/her fourth year. The candidate must notify the Chair of the Rank and Tenure Committee by September 1 or January 3 of his/her intent to submit materials. The candidate must submit the materials to the appropriate department chairperson by September 10 or January 12. By September 20 or January 22 the department chair submits to the appropriate dean all pre-tenure materials and an evaluation letter based on a thorough review of the pre-tenure documents. By October 1 or February 1 the Dean submits all materials to the Chair of Rank and Tenure along with an evaluation letter based on a thorough review of all pre-tenure materials.

Pre-tenure review materials should be no more than 35 pages (12-point font). The document should be numbered sequentially, include definitions of terms related to one's discipline, be proofread carefully and contain no appendices.

The pre-tenure portfolio should include:

1. a description of the pre-tenure candidate's progress to date in fulfilling each of the criteria for tenure (organized according to the tenure criteria section above);
2. the dean's detailed evaluation, or in the case of library faculty, the Director of the Library's evaluation of the pre-tenure candidate's portfolio, which must include a summative statement of the pre-tenure candidate's progress toward tenure;
3. the department chairperson's detailed evaluation of the pre-tenure candidate's portfolio, which must include a summative statement of the pre-tenure candidate's progress toward tenure;
4. tables that compile the pre-tenure candidate's teaching evaluations, including department, college, and University teaching evaluation means;
5. a self-assessment of the pre-tenure candidate's scholarly/creative work (e.g., selectivity of venues, impact of articles, citations);
6. the pre-tenure candidate's reflection on his/her teaching/librarianship;
7. the pre-tenure candidate's reflection on his/her service;
8. the pre-tenure candidate's description of his/her scholarship/creative activity agenda/plan.

Pre-tenure faculty members must structure their annual self-evaluations based on guidelines for the tenure application portfolio as described in the *Tenure* policy.

Deans and chairs must organize their responses to pre-tenure faculty members' self-evaluations and pre-tenure portfolios based on how the tenure section of handbook is organized. These responses must take into account departmental standards for scholarship/creative activity.

Model pre-tenure files are available in the office of the Vice President for Academic Affairs for the pre-tenure candidate's review.

#### *Pre-Tenure Review Procedures*

If a due date below falls on a weekend or a holiday, the due date becomes the next business day.

1. By September 1 or January 3, the faculty member initiates the process by submitting the Notification of Submission of Pre-Tenure Materials form to the Chair of the Rank and Tenure Committee. The Chair will be responsible for providing a list of faculty members who are submitting pre-tenure materials to the Vice President for Academic Affairs, the appropriate dean(s), and the head of the individual faculty member's academic department.

2. By September 10 or January 12, the faculty member submits to the department chairperson pre-tenure review materials of no more than 35 pages (12-point font). (If the applicant is the department head, the senior member of the department functions as the department head during these procedures.) The submitted materials must be structured based on how the tenure criteria section of the handbook is organized. The document must be numbered sequentially, include definitions of terms related to one's discipline, and carefully proofread. All annual evaluations of the candidate written by the appropriate dean and the department head must be included as part of the 35-page application.
3. By September 20 or January 22, the department head submits to the dean of the appropriate college all pre-tenure materials and an evaluation letter that is based on a thorough review of the pre-tenure documents.
4. By October 1 or February 1, the appropriate dean or the Director of Library Services reviews the evaluation of the department head when applicable and submits to the Chair of the Rank and Tenure Committee an evaluation letter and all pre-tenure materials. The evaluation letter is to be based on a thorough review of the pre-tenure materials.
5. The Rank and Tenure Committee evaluates the pre-tenure materials and submits its evaluation and the materials upon which the evaluation was based to the Vice President for Academic Affairs.
6. Having received all materials by October 21 or February 21, the Vice President for Academic Affairs evaluates the pre-tenure materials and accompanying documents.
7. By November 15 or March 15, the Vice President for Academic Affairs responds to the faculty member with an evaluation letter that is based on a thorough review of the pre-tenure material.

## Related Policies

- Promotion of Faculty Members
- Evaluation of Faculty Members
- Contractual Agreements with Faculty Members

## History

07/01/89 - Reaffirmed with publication of Faculty Manual  
 04/16/99 - Sentence re degrees from various institutions moved to *Qualifications for Appointment to Rank* policy as recommended by the Policy Committee of the University  
 03/22/00 - Reference to retirement age deleted at Executive Committee meeting of the Policy Committee of the University  
 07/01/03 - Editorial changes made to reflect academic restructuring  
 04/20/04 - Revision approved by the President of the University as recommended by the Policy Committee of the University to include faculty librarians  
 12/02/05 - Revision approved by the President of the University as recommended by the Policy Committee of the University  
 01/19/08 - Amended to reflect that decisions on rank and tenure are made by the President of the University  
 05/02/08 and 5/05/08 - Revision approved by the President of the University as recommended by the Policy Committee of the University  
 06/24/09 - Revision approved by the President of the University as recommended by the Executive Committee of the Policy Committee of the University.

09/09/09 - Change in Procedure No. 4 recommended by the Provost and Vice President for Academic Affairs and approved.

05/04/10 - Revision approved by the President of the University as recommended by the Executive Committee of the Policy Committee of the University. 12/09/11 - Revision approved by the President of the University as recommended by the Policy Committee of the University.

12/09/11 - Revision approved by the President of the University as recommended by the Policy Committee of the University.

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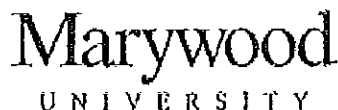
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## Policies and Procedures Manual: Civil Rights Policy

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### Policy Statement

Marywood University declares and reaffirms a policy of equal educational and employment opportunity and non-discrimination in the provision of educational and other services to the public. Marywood University does not condone and will not tolerate discrimination, harassment, or assault by any member of the Marywood community upon another individual, regardless of whether the action is based on race, sex, color, national or ethnic origin, age, creed, ancestry, religion, disability, or any other legally protected status. Marywood University will make reasonable accommodations to known physical or mental limitations of otherwise qualified individuals with disabilities unless doing so would impose an undue hardship on the University. Any person who believes he or she may require such accommodation should contact the Assistant Vice President for Human Resources and Affirmative Action Officer.

Marywood University is committed to take all necessary steps to comply with any obligations it may have under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Title IX of the Civil Rights Act of 1964, as amended. These are explicit civil and legal applications of the formulation of beliefs already cherished in Marywood's religious commitment, objectives, and practices.

### Definitions

#### *Sexual Harassment*

Marywood University adopts the following definition of sexual harassment based on the statement endorsed by the American Association of University Professors, revised June 1995, and considers it applicable to the entire Marywood community:

Sexual advances, requests for sexual favors, and other conduct of a sexual nature constitute sexual harassment when:

1. such advances or requests are made under circumstances implying that one's response might affect academic or personnel decisions that are subject to the influence of the person making the proposal; or
2. such speech or conduct is directed against another and is either abusive or severely humiliating and/or persists despite objection of the person targeted by the speech or conduct; or
3. such speech or conduct is reasonably regarded as offensive and substantially impairs the academic or work opportunity of students, colleagues, or co-workers. If it takes place in the teaching context, it must also be severe, pervasive, and not germane to the subject matter. The academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material.

#### *Sexual Assault*



Sexual assault is defined as threats of, or deliberate physical contact of a sexual nature that is against another person's will or without consent. Examples of such behavior include, but are not limited to the following:

1. deliberate physical contact of a lewd type, including brushing, touching, grabbing, pinching, patting, hugging and kissing;
2. deliberate or reckless threats, actual or implied, of physical contact of a sexual nature that results in reasonable fear of sexual assault or physical harm;
3. coerced sexual activities, including rape. Rape, the most severe type of sexual assault, is legally defined in Pennsylvania as sexual intercourse that is coerced through force or threats of force, or with someone who is unconscious or with someone who is so mentally deranged or deficient as to be incapable of consent.

## Procedures

In furtherance of Marywood University's commitment to its duties and obligations, regular training on harassment, discrimination and related topics is provided for managers and supervisors in the Marywood community.

A list of Marywood University and community resources is available at the Human Resources Office.

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## History

11/03/97 - Reaffirmed by Board of Trustees and Members of the Corporation

04/15/00 - Revision approved by the Board of Trustees

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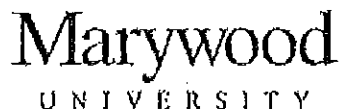
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## Policies and Procedures Manual: Conditions of Computer Use

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### Policy Statement

Users of Marywood University computing facilities and services are held to high ethical standards. These conditions of use are based on the "spiritual, ethical and religious values and a tradition of service" expressed in the Mission Statement of the University. They underscore responsible, ethical, legal, and secure use of the campus-wide information system, and they derive from standards of common sense and common decency that apply to any shared resource. Responsibility extends to access, use of information, and distribution of data.

Marywood University administrators, faculty members, staff, and students may use the computers in all public computing facilities for research work and classroom assignments. Within the limitations of lab scheduling, students have priority over others for use of the facilities. Anyone who is not a currently enrolled student or employee may use the public facilities only at the discretion of University staff. Marywood University does not assume any liability for data loss. Those who use its computers do so at their own risk. Use of administrative computers is authorized with the permission of the appropriate department head.

Access to the Marywood computer system is not a right, but a privilege. When individuals log on to the University's computer system, they become responsible for adhering to University policy and state and federal laws governing individual privacy rights and confidentiality. The following list is not all-inclusive:

1. They respect the privacy of others by not attempting to access their accounts or tampering with their data.
2. They honor the intellectual rights of others by avoiding copyright infringement. This includes all Marywood University-owned computers, i.e., computers purchased with University funds.
3. They respect the policies and procedures of external networks, such as the Internet and systems that can be accessed via the Internet.
4. They do not make or use unauthorized copies of copyrighted or licensed programs or data. They only use authorized copies in full accord with the license agreement and national and international laws.
5. They do not attempt to bypass any security system in order to access privileged information or alter existing interfaces.
6. They do not develop or use programs, transactions, data, or processes that harass other users, infiltrate the system, or damage or alter data or software.
7. They do not develop or use mechanisms to alter University records.

8. They do not load or use personal or existing programs that affect the stability of systems, or use programs in an attempt to hinder or harass others.
9. They do not load software in classroom or computer labs, drop-in facilities, or other University-owned computers.
10. They use only their own User ID and password; rights to individual accounts are not transferable. All members of the University community are responsible for securing their passwords. All passwords are to be treated as confidential University information.
11. They respect the civil rights of others to an open and hospitable environment, regardless of race, sex, color, national or ethnic origin, age, creed, ancestry, religion, disability, or any other legally protected status, and with respect to sexual harassment including e-mailing inappropriate messages.
12. They do not use University owned or operated computers for a personal business.
13. They do not open or download pornographic materials or other materials that violate the Mission Statement of the University.
14. They use resources efficiently, avoiding printing large amounts of unnecessary information or downloading files for long periods of time.
15. They do not damage or alter equipment or software either physically or with a virus. They do not bring food or drink into computer labs, drop-in areas, near computers or computer-related equipment.
16. They abide by an instructor's requirements for computer use, including participation in an on-line course or in a listserv. They honor an instructor's right to allow or disallow use of a computer while the room is in use for instructional purposes. They do not disrupt a class that is being held in a computer lab or other technologically oriented facility, such as broadcast studio or video conferencing room.

Marywood University reserves the right to monitor and record any action performed while using the computer system. An audit trail is kept by system management software. If it is determined that use is contrary to Marywood policy, the appropriate department may examine the user's actions. If computing staff members suspect that any of these conditions are being violated, staff will initiate an investigation through the appropriate agency on campus. During the investigation, the account in question and all computing services may be suspended.

Privacy is neither a goal nor a condition of the University's computing system. There is not an expectation of privacy with regard to the information stored on University-owned or operated computers or, when applicable, other computers attached to the Marywood University network; and there are no specific laws, rules, or regulations that protect the privacy of a user's files, electronic mail messages, or any other information retrieved as a result of a person's session on the Marywood system.

While Marywood University respects an individual's privacy whenever possible, it does have and will exercise its right to examine a University-owned or operated computer and its contents if there is a reasonable indication that it has been used to download or store illegal materials, such as pornography or illegal software.

Marywood University reserves the right to report suspected criminal offenses to civil authorities. Institutional disciplinary charges may be filed in addition to civil actions.

These conditions of use have been established for the protection of all users but provide neither absolute security nor unqualified privacy.

## Definitions

**System** is used in a generic sense to refer to the aggregate of all hardware and software owned or licensed by Marywood University, including the network.

As a general matter, **copyright** infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner.

## Procedures

Contact the Office of Information Technology with questions about

- computer network support of instructional, research, and service activities;
- computer network support of administrative activities;
- voice and data network design and maintenance, desk-top computer repairs and installations.

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## Related Policies

- Website Policy
- University Website Policy

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## Related Committees

Technology Advisory Committee  
Academic Computing Advisory Committee

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## History

01/10/97 - Recommended to the President by the College Committee on Policy  
02/06/97 - Approved by the President of the University with publication of The President's Memo  
04/17/04 - Revision approved by the President of the University as recommended by the Policy Committee of the University  
02/20/09 - Procedures changed in order to direct all questions to the Office of Information Technology

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## Policies and Procedures Manual: Academic Freedom

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### Policy Statement

Marywood University affirms its commitment to academic freedom. In so doing, it reaffirms its commitment to the tradition of higher learning that is the heritage of both the Roman Catholic Church and the nation. It is a tradition grounded on respect for truth, social responsibility and individual rights. It is a tradition that posits freedom of inquiry, open discussion and unrestricted exchange of ideas as essential to the pursuit of knowledge.

Marywood University upholds academic freedom as a fundamental condition for research and dissemination of information. The University is a center of discourse where inquiry is encouraged and discoveries are verified and refined by the interaction of scholar with scholar. Marywood University respects the right and responsibility of its faculty and students to conduct research, to publish their findings, and to discuss ideas according to the principles, sources and methods of their academic disciplines. These principles, sources and methods, as they develop over time, are not external to their respective disciplines. The University sanctions and encourages investigation of unexplored phenomena, advancement of knowledge, and critical examination of ideas, old and new. The University accepts the responsibility of protecting both teacher and student from being forced to deny truth that has been discovered or to assert claims that have not been established in the discipline. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching material matter that has no relation to their subject.

Where the faculty is concerned, academic freedom presupposes, first of all, personal integrity in dealing with students, peers and officers of the University. Second, it presumes scholarly competence, observance of the professional standards of one's discipline, commitment to the stated mission of the University, and openness to having one's ideas and findings subjected to the judgment of one's peers. Third, faculty members have a responsibility as professional scholars to be accurate and judicious in their public statements, and respectful of the opinions and responsibilities of others.

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### Related Policies

- Professional Ethics
- Evaluation of Faculty Members
- Faculty Status

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### Related Committees

## Institutional Review Board for the Protection of Human Participants

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### History

12/01/79 - Reaffirmed with publication of *Faculty Manual*

07/01/93 - Introduction and postscript added

07/01/03 - "Human Subjects" changed to "Human Participants"

02/19/10 - Revision approved by the President of the University as recommended by the Policy Committee of the University

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## Policies and Procedures Manual: Professional Ethics

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### Policy Statement

The American Association of University Professors recognizes that membership in the academic profession carries with it special responsibility. The Statement on Professional Ethics that follows sets forth general standards assumed by members of the profession.

Professors, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognize the special responsibilities placed upon them. Their primary responsibility to their subject is to seek and to state the truth as they see it. To this end, professors devote their energies to developing and improving their scholarly competence. They accept the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. They practice intellectual honesty. Although professors may follow subsidiary interests, these interests must never seriously hamper or compromise their freedom of inquiry.

As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly and ethical standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to assure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom.

As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates. In the exchange of criticism and ideas, professors show due respect for the opinions of others. Professors acknowledge academic debt and strive to be objective in their professional judgment of colleagues. Professors accept their share of faculty responsibilities for the governance of their institution.

As members of an academic institution, professors seek above all to be effective teachers and scholars. Although professors observe the stated regulations of the institution, provided the regulations do not contravene academic freedom, they maintain their right to criticize and seek revision. Professors give due regard to their paramount responsibilities within their institution in determining the amount and character of work done outside it. When considering the interruption or termination of their service, professors recognize the effect of their decision upon the program of the institution and give due notice of their intentions.

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their



subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

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## Related Policies

- Teaching Responsibility
  - Librarianship Responsibility
  - Faculty Status
- 

## History

07/01/89 - Reaffirmed with publication of Faculty Manual

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## **President's Page: Marywood University Mission & Core Values**

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### **Mission Statement**

A Catholic university sponsored by the Congregation of the Sisters, Servants of the Immaculate Heart of Mary, Marywood University roots itself in the principle of justice and a belief that education empowers people. Enacting its ideals, Marywood offers students a welcoming and supportive community that encourages men and women of all backgrounds to shape their lives as leaders in service to others. Proud of its liberal arts tradition and host of professional disciplines, Marywood challenges students to broaden their understanding of global issues and to make decisions based on spiritual, ethical, and religious values. Marywood calls upon students to seek their full potential and invites all to engage in a lifelong process of learning. Witnessing the efficacy of teaching and scholarship, Marywood educates students to live responsibly in a diverse and interdependent world.

### **Core Values**

#### **Catholic Identity**

A commitment to spiritual, ethical and intellectual values in the context of a faith community.

#### **Respect for Each Person**

Respect for the value of each human being, for diversity in the context of vibrant community, and for the earth and all creation.

#### **Empowerment**

Education to enable access and to empower the underserved to take a full role in the life of the broader society.

#### **Service**

Rooted in the deep belief that learning and scholarship serve the global community is the belief in the value of the diverse types of work that support that service, and the preparation of students for leadership by participation in service.

#### **Commitment to Excellence**

The belief that the work of education has the capacity to forward the kingdom of God, in broad and varied ways, leads us to care passionately for the quality of the mission of Marywood.

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## **President's Page: Marywood University's Goals & Objectives**

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### **Provide a values based context for university experiences.**

- A majority of students will participate in service opportunities in an on-going way.
- Students will demonstrate an understanding of the ethical dimensions of their fields of study.
- A majority of students will participate in spiritual development activities.
- Employees will demonstrate core values in the work place.

### **Foster an awareness and appreciation of the pluralistic nature of contemporary society.**

- Graduates will choose to study or work in multicultural settings either at home or abroad.
- Students will demonstrate a deeper appreciation for cultural diversity and an understanding of global issues.
- Enrolled students will travel abroad during their college years.
- Employee groups and governing bodies will reflect the pluralistic nature of contemporary society.

### **Provide a supportive and welcoming environment to a diverse academic community.**

- Students enrolled in any program will fulfill their academic goals by successfully completing their degree work.
- An increasing number of racially and culturally diverse students and employees will choose Marywood as a welcoming community.
- Students from a cross-section of socio-economic groups will enroll in each incoming class.
- Campus constituencies will express satisfaction with all campus services.

### **Prepare people for socially responsible leadership roles.**

- Students will participate in an internship or practicum experience.
- Students will demonstrate a significant level of co-curricular activities.
- Students will experience positive interactions with faculty members outside of class.
- Employees will serve as role models of socially responsible leaders.

**Provide a challenging instructional program.**

- Students will demonstrate achievement of cognitive skills at a level comparable to peers on standardized tests.
- Students will demonstrate the ability to think critically by engaging in research activities and by developing problem solving strategies.
- Students will demonstrate the ability to integrate the liberal arts tradition with their professional specializations.
- Students will demonstrate competence in both information literacy skills and communications skills.
- Faculty will provide evidence of ongoing scholarly activity.

**Inspire a sense of personal responsibility for responding to social justice issues.**

- Faculty, staff, and students will participate in projects designed to address social inequities.
- Students will demonstrate knowledge of both national and international social justice issues.
- Faculty, students, and staff will serve as advocates for justice in their personal and professional lives.

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Release of Personal Information

*Please check one box below; sign, date, and return by February 3, 2012*

☐ I DO NOT grant permission for Marywood University to release Sister Anne Munley's Recommendation for Termination and Statement of Charges dated 1/24/12 to a faculty review committee comprised of tenured faculty. I understand that by refusing such permission that there will be no faculty committee review of Sister Anne Munley's decision to terminate my tenure and employment with the University prior to it being finalized.

OR

☐ I DO grant permission for Marywood University to release Sister Anne Munley's Recommendation for Termination and Statement of Charges dated 1/24/12 to a review committee comprised of tenured faculty.

This authorization is valid until rescinded by me in writing.

\_\_\_\_\_  
Frederick F. Fagal, Jr.

\_\_\_\_\_  
Date

# Exhibit 29

## Faculty Grievances and Appeals

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### Policy Statement

As an institution of higher education, Marywood University brings together a faculty, administration, and governing board united in a common bond of academic purpose. Essential to the fulfillment of this purpose is a mutual recognition of institutional integrity and individual human rights, along with an understanding of the respective roles of the several entities which constitute this educational organization.

Circumstances may arise at times, however, wherein a grievant--full-time, part-time, or pro-rata--may question decisions which affect his/her professional role in the institution. To assist in the resolution of these matters, a series of guidelines for grievances is herein set forth.

### Definitions

**Grievance:** A grievance refers to any disagreement between two parties. A grievance identifies a complaint one party has against another party for some alleged wrongful action on the part of the second party.

**Grievant:** A Grievant initiates a grievance.

### Types of Issues That Can Be Grieved

It is understood that procedural rather than substantive factors provide appropriate areas of review, and the Faculty Grievance Committee will not attempt to substitute its judgment for that of the decision-maker(s) involved in the case.

Thus, the Faculty Grievance Committee will hear grievances concerning:

- 1) Allegations of violation of academic freedom resulting in: denial of tenure, promotion, or sabbatical leave; non-reappointment.
- 2) Allegations of impermissible discrimination. Tenured and non-tenured faculty are protected against illegal or unconstitutional discrimination, or on any basis not relevant to job performance, and includes, but is not limited to, race, sex, religion, national origin, age, disability, marital status, or sexual orientation
- 3) Allegations of inadequate consideration resulting in: denial of tenure, promotion, or sabbatical leave; non-reappointment; or termination of employment due to retrenchment.
- 4) Allegations of violations of procedures used in rendering decisions in numbers 1 and 2 above as set forth in Chapter 2 of the *Faculty Handbook*.

Procedures regarding dismissal, suspension, and sanctions of faculty members are in the *Progressive Discipline*



policy.

Should a grievant allege cause for grievance in any matter not identified in the above guidelines, the grievant may consult the Faculty Grievance Committee. In such circumstances, the Committee's first decision is whether the complaint is appropriate and sufficiently serious to merit consideration.

### **Persons Against Whom Grievances May be Directed**

Fundamentally, a grievance may arise from an allegation of improper implementation of a procedure or process leading to a decision. The person(s) or body who perform(s) that procedure or process is (are) the subject(s) of the grievance. Thus, a grievant may direct a grievance against the person(s) or body responsible for the decision identified herein.

The decisions or actions of the Faculty Grievance Committee or Ad Hoc Hearing Committee may not themselves be grieved.

## **Procedures**

### **Informal Procedure**

- 1) A member of the faculty must initially discuss a complaint with the person or body responsible for the action to which the grievant takes exception in order to determine if a resolution is possible.
- 2) A complaint must be presented within (10) calendar days of the occurrence or discovery of the alleged violation.
- 3) No grievance may be filed without the initiation of this informal complaint procedure.
- 4) If the grievance still exists after step one the grievant initiates a consultation with the Vice President for Academic Affairs in order to try to resolve the matter.

### **Formal Procedure for Filing a Grievance**

- 1) The Faculty Grievance Committee is convened.

### **Faculty Grievance Committee**

The Faculty Grievance Committee consisting of three tenured faculty members and two alternates (also tenured) is specifically charged with responsibility for resolving matters of grievance and appeal. The Faculty Senate conducts the election of this committee. Faculty currently serving on the Rank and Tenure Committee or the Faculty Development Committee are not eligible for election to this committee.

The term of each member extends for three years, with one person replaced each year. An alternate will be identified at each election. Any member of the Grievance Committee who has had any prior involvement in a case under consideration must recuse him/herself. The Grievance Committee shall annually elect a chair-elect who will succeed the Chair.

### **Grievance Process**

The grievant may consult the President of Faculty Senate for assistance in contacting the Faculty Grievance Committee Chair. The Chair should be provided with a written statement setting forth, in detail, the nature of the grievance or appeal and identifying the person(s) or body against whom the grievance or appeal is directed; this document may also include a proposal for resolving the issue. A grievance must be filed within thirty (30) calendar days of the occurrence or discovery of the alleged violation but not fewer than five (5) calendar days after the initiation of the informal complaint.

In considering the grievance or appeal, the Faculty Grievance Committee will take the following steps:

- 1) The Committee notifies the decision maker(s) that a grievance has been filed.
- 2) The Grievance Committee requests from the grievant written information regarding the issues. The Grievance Committee also requests from the decision maker(s) written statements describing the basis for the decision being appealed or grieved, as well as any attempts to settle the matter informally. This information shall be held in confidence by the Grievance Committee. At this point in the process, the information gathered is solely for review by the Committee and is not to be shared with either party involved.
- 3) At any point, the Grievance Committee may request additional information in writing from the grievant and from the decision-maker(s).
- 4) If after completing the above steps, the Committee determines that the grievance is improper or unsubstantial, or that sufficient time had not yet been allowed for its normal resolution, or that there is no evidence of improper action on the part of the decision maker(s) which would constitute a legitimate grievance, the Committee will communicate this determination to the grievant and the decision maker(s).
- 5) If the Grievance Committee determines that there was inadequate consideration or violation of procedures (see No. 3 and 4 under Types of Issues Which Can Be Grieved above), the Committee will return the case to the decision maker for reconsideration.
- 6) If the grievance is deemed appropriate for mediation, the Chair will appoint a Mediator from the University. The Mediator does not represent either party. Any party may object to the Mediator on the grounds of actual or apparent bias or conflict of interest and submit such objections to the Chair in writing. The Chair will review the objections and may replace the mediator.
- 7) The Offices of the Vice President for Academic Affairs or Human Resources may be consulted by the Mediator on mediation procedure or other matters involved in the grievance.
- 8) The Mediator shall try to resolve the grievance within thirty (30) calendar days of formal submission to the chair. With the consent of both parties, the period of mediation may be extended for a short period of time. If the grievance is not resolved within the thirty (30) calendar days, the mediator will advise the chair of the committee in writing that the issue has not been resolved. If a mutually accepted agreement is reached, this will be communicated to the chair of the committee.
- 9) Grievances not appropriate for mediation or grievances not resolved through mediation shall be referred to the Ad Hoc Hearing Committee. All evidence collected will be passed on to the Ad Hoc Hearing Committee.
- 10) If the Faculty Grievance Committee recommends a formal hearing, in cases of violation of academic freedom or impermissible discrimination, an Ad Hoc Hearing Committee will be created to conduct a formal

investigation and to arrive at a recommendation for resolving the issue.

11) The Grievance Committee will make a summary report of its activities at the end of each academic year to the Faculty Senate. No details relevant to the privacy of the participants in any cases will be included in this report.

### **Ad Hoc Hearing Committee**

The Ad Hoc Hearing Committee shall consist of three members, selected by the Faculty Senate Executive Council, from a standing committee of fifteen tenured Faculty Members elected for one-year terms by the faculty at large. The Faculty Senate conducts the election of this committee.

Each party shall have two challenges without stated cause regarding membership of the Ad Hoc Hearing Committee. No member of the Ad Hoc Hearing Committee shall have had any prior involvement in the case.

If the three-person Ad Hoc Hearing Committee cannot be chosen from the fifteen members of the standing committee, the Executive Council of the Faculty Senate is empowered to conduct a special election to obtain fifteen additional members with terms of one year.

The Ad Hoc Hearing Committee must select a chairperson.

### **Ad Hoc Hearing Procedures**

- 1) The Ad Hoc Hearing Committee is empowered to gather information and documents specific to the case of the Grievant, conduct interviews, hold a hearing and take actions as are necessary to investigate the grievance to the extent that the law and University policy permit. The Ad Hoc Hearing Committee will provide recommendations in writing forty (40) calendar days from the date of its official appointment.
- 2) All Hearings are closed to anyone other than the parties and their advisors, members of the Ad Hoc Hearing Committee, and any witnesses invited to testify by the Committee. The hearing may be audio or video recorded and a written record will be maintained. The hearing is not a legal proceeding. At the beginning of the hearing, all procedures will be made known to the parties, and all information will be kept confidential.
- 3) Each party to the grievance may have one advisor during the hearing. The advisor may not participate in the hearing.
- 4) Strict rules of legal evidence will not be binding upon the Ad Hoc Hearing Committee and evidence of probative value in defining issues may be admitted.
- 5) The hearing record will be used exclusively as the basis for findings of fact and for arriving at a decision.
- 6) Upon reaching a decision on the issue and a recommendation for action, the Ad Hoc Hearing Committee will provide a summary written report to the petitioner, the person(s) named in the grievance, and the appropriate administrative officer and the President.
- 7) After receiving the recommendation of the Ad Hoc Hearing Committee, the appropriate administrative officer will review the recommendation and notify the Ad Hoc Hearing Committee and petitioner whether the recommendation has been accepted. If the recommendation of the Ad Hoc Hearing Committee is not

accepted by the appropriate administrative officer, the administrative officer will review it with the Ad Hoc Hearing Committee.

8) No details relevant to the privacy of the participants in the case will be included in the notice from the Hearing Committee. Public statements and publicity about the case by the participants will be avoided until the proceedings have been completed, including consideration by the President

### **Action by the President of the University**

Following the recommendation of the Ad Hoc Hearing Committee, should the petitioner desire further consideration of the issue beyond the immediate administrative channels of the University, the President may be requested, within twenty calendar days, to review the case.

This review will be based on the record from the committee hearing and may provide opportunity for argument, oral or written, or both, by the principals. Then the President will then make the final decision.

### **Responsibility for Expenses Incurred in Grievance and Appeal**

Expenses incurred by the grievant are the responsibility of the individual. These include, but are not limited to, the following:

Cost of an advisor.

Travel expenses for advisor, witnesses, or others engaged by petitioner.

Cost of preparing any documents and copies thereof.

### **Withdrawal of a Grievance**

The grievance can be withdrawn at any point in the process.

### **Non-Retaliation**

Grievants will not be adversely affected for exercising their right to file a grievance, regardless of outcome.

Grievants will not be subject to adverse consequences for either initiating a grievance or in presenting evidence on behalf of a grievant. Anyone who violates this mandate can be subject to disciplinary action, up to and including dismissal.

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## **Related Policies**

- [Academic Freedom](#)
- [Disability Grievance Procedures](#)
- [Civil Rights Policy](#)
- [Civil Rights Complaint Procedures](#)
- [Sabbatical Leave for Faculty Member](#)
- [Non-reappointment of Faculty Member](#)

- [Promotion of Faculty Members](#)
- [Evaluation of Faculty Members](#)
- [Retrenchment of Faculty](#)
- [Tenure](#)
- [Progressive Discipline](#)

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## History

10/02/92 - Proposal returned to committee of Faculty Senate by College Committee on Policy

11/13/92 - Proposed policy dated 3/13/92, as amended, recommended by College Committee on Policy to the President

04/26/93 - Presidential approval affirmed with publication of the President's Memo

03/20/98 - Revision proposed by Faculty Senate approved by the President of the University as recommended by the Policy Committee of the University

04/29/11 - Revision approved by the President of the University as recommended by the Policy Committee of the University

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Mary T. Gardier Paterson, Esquire | Secretary of the University | [mtgpaterson@marywood.edu](mailto:mtgpaterson@marywood.edu)

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Comments to [Marywood University Web Development Office](#): [webber@marywood.edu](mailto:webber@marywood.edu)

# Exhibit 30

February 27, 2012

Dear Sr. Anne,

This is to inform you that Fred Fagal notified me by email on February 22 that he is filing a formal appeal to the Faculty Senate Grievance and Appeals Committee. He alleges that he was improperly suspended, that the President improperly moved to terminate his employment and tenure, and that his request to convene an ad hoc committee to appeal the suspension has not been accepted. His grievance appeal was accompanied by five documents, detailing correspondence between him and you, between Mr. Cohen and Mr. Anthony, and an email he had sent to the Marywood faculty. On Feb. 24 he sent an additional document, a letter from J.A. Cohen to W. Anthony, dated Feb. 17, 2012.

Thank you for your attention and concern.

Gail Cabral, IHM, Ph.D.

President, Marywood Faculty Senate

# Exhibit 31



**From:** Frederick Fagal <fffagal@yahoo.com>  
**Sent:** Wednesday, February 22, 2012 4:37 PM  
**To:** cabral@marywood.edu  
**Subject:** Fred Fagal Grievance  
**Attachments:** E-mail\_from\_F.D.\_Ferrese\_to\_F.F.\_Fagal\_dated\_1-24-2012[1].pdf; E-mail\_from\_F.F.\_Fagal\_to\_Marywood\_Faculty\_dated\_1-13-2012[1].pdf; Letter\_from\_J.Z.\_Cohen\_to\_President\_Anne\_Munley\_dated\_2-2-2012[1].pdf; Letter\_from\_W.J.\_Anthony\_to\_J.Z.\_Cohen\_dated\_2-9-2012[1].pdf; Grievance\_of\_Dr.\_Frederick\_F.\_Fagal,\_Jr.\_-\_Final[1].docx

Dear Sr. Gail:

I received your e-mail of February 17, 2012. I have not heard from you with regard to making contact with the Faculty Grievance Committee Chair. The next step, I understand from the Faculty Grievances and Appeals policy, is that "[t]he Chair should be provided with a written statement setting forth, in detail, the nature of the grievance or appeal and identifying the person(s) or body against whom the grievance or appeal is directed; this document may also include a proposal for resolving the issue." Below I have written such a statement. I ask that you kindly forward it to the Faculty Grievance Committee Chair. If you have any questions or require additional information, please do not hesitate to ask.

Sincerely,

Fred

Frederick F. Fagal, Jr.  
Associate Professor of Economics  
Marywood University

**Grievance of Dr. Frederick F. Fagal, Jr. Against President Anne Munley**

I am hereby filing a formal grievance against President Anne Munley pursuant to Marywood University's Faculty Grievances and Appeals ("FGA") policy. The most current version of all of Marywood's policies are available on the University's web site. See Policies and Procedures Manual – Marywood University, <http://www.marywood.edu/policy> ("PPM").

My grievance is based on the following violations of Marywood's Progressive Discipline policy.

1. *President Munley improperly suspended me.* At 8:45 am the morning of January 23, 2012, Dean Michael Foley of the College of Liberal Arts and Sciences stopped by my office. He told me that President Munley was summoning me to her office for a 9:00 am meeting. Barely time to catch my breath. Once in her office, she asked me if I was responsible for posting a two-part video on YouTube. My answer was "yes." This was clear as I had linked to the videos in an e-mail to Marywood's faculty dated January 13, 2012. At the end of my meeting with President Munley, she told me that I was suspended with pay; that I should turn in my University ID and keys to Pat Dunleavy; and that I should clean out my office. President Munley's suspension was improper on at least two procedural grounds:

a. Marywood's Progressive Discipline Policy states that "[t]he faculty member may be suspended by the Vice President for Academic Affairs at any time during the proceedings involving him or her." PPM, "Progressive Discipline." Nowhere does the Progressive Discipline Policy authorize Marywood's President to suspend a faculty member. To my knowledge, the Vice President for Academic Affairs (Dr. Alan M. Levine) had nothing to do with my suspension. He was not at the meeting. My attorney, Jonathan Z. Cohen, Esquire, wrote a letter to President Munley dated February 2, 2012 pointing this out. In response, President Munley and her/Marywood's outside counsel, William J. Anthony, Esquire, wrote letters on February 8 and 9, respectively. Neither letter denied what Mr. Cohen pointed out.

b. Marywood's Progressive Discipline Policy further states that "[s]uspension is justified if immediate harm to the faculty member or others is threatened by the person's continuance in the faculty position." PPM, "Progressive Discipline." To my knowledge, President Munley has never alleged that I have ever been an "immediate harm" to anybody. Mr. Cohen's letter of February 2, 2012 pointed this out. In response, neither President Munley nor Mr. Anthony disputed this.

2. *President Munley improperly moved to terminate my employment and tenure.* At 1:11 PM on January 24, 2012, I received an e-mail from Frances D. Ferrese. As you know, Ms. Ferrese is President Munley's assistant. Ms. Ferrese's e-mail attached a letter from President Munley and five (5) other documents. The first sentence of President Munley's letter begins: "In follow up to our meeting yesterday, I am writing to inform you that I am recommending that your tenure and employment with Marywood be terminated immediately..." President Munley's move to terminate my employment and tenure was improper for at least two procedural reasons:

a. Marywood's Progressive Discipline Policy contains one sentence addressing dismissal: "If remedial actions(s) taken during the suspension does not sufficiently resolve the issues that lead to the suspension, the university may move towards dismissal of the faculty member." PPM, "Progressive Discipline." To my knowledge, no "remedial actions" were taken during my suspension. As stated above, my suspension commenced at some point during the morning of January 23, 2012. President Munley's letter moving to terminate me arrived at 1:11 PM on the following day. Again, Mr. Cohen's letter of February 2, 2012 points this out. In response, neither President Munley nor Mr. Anthony disputed this fact that no remedial actions were proposed or taken.

b. Marywood's Progressive Discipline Policy suggests that only the Vice President for Academic Affairs may recommend dismissal: "Having received a written recommendation for either suspension or dismissal *from the Vice President for Academic Affairs*, the President of the University sends a written communication to the faculty member, stating with reasonable particularity the basis for suspension or dismissal and offering, if requested by the faculty member within 10 days, to convene a tenured faculty ad hoc committee to consider the matter, to render confidential advice, and thereby to effect a remedy if possible." PPM, "Progressive Discipline" (emphasis added). I am not aware of any evidence that Dr. Levine played a role in recommending my dismissal.

3. *My request to convene an ad hoc committee to appeal the suspension has not been accepted.* Marywood's Progressive Discipline policy states that "[f]aculty members have the right to convene an ad hoc committee in order to appeal either a decision to suspend the faculty member or a decision to dismiss the faculty member." PPM, "Progressive Discipline." This policy also states: "Should a faculty member request that such a committee be convened twice (i.e., once for suspension and once for dismissal), the membership of the committee may be similar or different..." PPM, "Progressive Discipline." By my attorney's letter of February 2, 2012, I elected to convene an ad hoc committee to appeal President Munley's decision to suspend me. President Munley's letter in response dated February 8, 2012 ignored my request. Mr. Anthony's letter to my attorney dated the next day states that "as a result of [Dr. Fagal's] first breach, he is not entitled to pick and choose which policies and procedures he believes will suit him best." Mr. Anthony more than confirmed President Munley's ignoring of my request. Mr. Anthony made this stunning assertion: "As a result of Dr. Fagal's breach of contract Marywood had no further contractual obligations to him."

I would ask that you closely consider Marywood's assertion that it owes no further contractual obligations to me. In effect, this means that Marywood has suspended its entire Policies and Procedures Manual—including its detailed disciplinary apparatus—with respect to me. The natural consequence of Marywood's bald assertion is, of course, that the University believes that the Faculty Grievance Committee need not fulfill its function with respect to me either. Every faculty member should find this consequence as offensive as I do. Given the conflicting messages that you are likely receiving, I strongly recommend that the Faculty Grievance Committee hire its own independent counsel.

My proposal for resolving this issue is that the Faculty Grievance Committee strongly recommend that President Munley comply with the Progressive Discipline policy, which she personally revisited and approved in October 2011. Under that policy, President Munley should rescind her suspension and her letters recommending the termination of my employment and tenure—as she lacked the authority to take either step. Short of this, President Munley should permit me to convene an ad hoc committee to appeal her decision to suspend me. That appeal should obviously take place prior to any hearing regarding President Munley's recommendation to terminate me given that the propriety of this recommendation depends upon the propriety of my suspension. See PPM, "Progressive Discipline."

For your convenience, I have attached PDF copies of my e-mail of January 13, 2012 (with all attachments); Ms. Ferrese's e-mail of January 24, 2012 (with all attachments); my attorney's letter to President Munley dated February 2, 2012; and Mr. Anthony's letter dated February 9, 2012 (which attached President Munley's letter of February 8, 2012.).